United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7295

United States Court of Appeals

FOR THE SECOND CIRCUIT

FOR THE SECOND CIRCUIT

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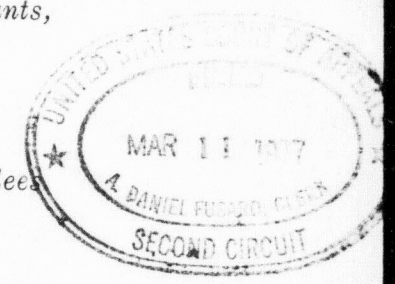
CARL A. BEAZER, *et al.*,

Plaintiffs-Appellees-Cross-Appellants,

—against—

NEW YORK CITY TRANSIT AUTHORITY, *et al.*,

Defendants-Appellants-Cross-Appellees



ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume III — Pages 865a–1144a

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* * *

WILBUR B. MC LAREN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SUMMERS:

Q What is your occupation?

A I'm executive officer for labor relations, personnel, New York City Transit Authority.

Q And how long have you held that position?

A Since June of 1969.

Q And is that your first position with the New York City Transit Authority?

A Yes.

Q Now, would you tell us what your prior general

business experience has been and in what areas?

A All my business experience has been in the labor relations personnel area, and I have held various positions in that field since 1946.

I have been everywhere from interview to vice president of major corporations.

Q Would you name some of these corporations?

A The Kaiser Motors and Kaiser-Willys, A.O. Smith Corporation, Inland Steel and the McCall Corporation of the Norden-Simon group.

Q Now, when you came to the Authority, did there come a time when you became conscious or aware of the fact that a drug problem might exist?

A Yes.

Q In the employment area?

A Yes.

Q Let me ask you this:

Before you came to the Authority, did you have any experience in this area outside of New York City?

A With drugs?

Q Yes.

A Limited.

Q All right, having become aware of this drug situation, and I will let you describe what it was, you di

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something, took some action, is that correct?

A Yes.

Q Would you take it please in detail and tell us just what you did with respect to this problem of which you are aware and with whom you did it and how you utilized your staff and so forth to fully acquaint yourself with the problem and make decisions, whatever decisions you made?

A In the summer of 1969, the roof fell in on the Transit Authority. We had a series of accidents, collisions, and fires, mostly cable fires, smoke, and the result is that there was a disastrous effect on our relations with the public.

Now, this was at the height of our turn-over problem that was generated by the early retirement plan, and we had at that point what we call a training turn-over of about 55 percent in two years.

Q Was the early retirement plan something that had been actually negotiated with the union?

A Yes, I believe it had been negotiated in 1968 and took effect one year later, and the training turn-over is comprised of new employees that have to be trained and employees that have to be trained as a result of promotion, and the instability of the work force created lots of operational problems.

Now, two of the accidents were especially severe and resulted in either passenger deaths or passenger injuries.

Now, along with that, at that time, we were experiencing a series of especially brutal assaults upon our bus drivers. This was of course for purpose of robbery and other reasons. And the union was up in arms about this, of course, so were our employees.

The police had been put into the Transit Authority I believe in large numbers about two or three years before as a result of some brutal murders and a tax on the subway, and again, this whole area was under constant police surveillance.

Now, as a result of this, there was a constant knowledge of the Authority about the rising drug traffic in New York City, drug use.

The Brooklyn accident resulted in the District Attorney Gold issuing a series of recommendations.

THE COURT: If I may interrupt you, what was the Brooklyn accident?

THE WITNESS: This was an accident where we had a train, a motorman sped by his stop, his signal stop, and rammed into another train.

THE COURT: He did what?

THE WITNESS: He disregarded his signals and ran

ran into another train and the result was a number of passengers were injured, including the motorman.

THE COURT: And after that the District Attorney did what?

THE WITNESS: He issued a series of recommendations

THE COURT: What were these?

THE WITNESS: Well, one of them had to do with our medical department, and the medical department -- he suggested the medical department reevaluate their procedures and update their policies.

Now, --

THE COURT: Is there anything medically wrong with that motorman? What caused him to do that, do you know?

THE WITNESS: Well, the testimony was that he had very erratic behavior, by the conductor, and that prior to the accident, the train was jerking, going through a number of various odd gyrations, and he was injured and of course went to the hospital, and he never returned to work. We really don't know.

THE COURT: Do you believe he had some medical problem that caused him to --

THE WITNESS: Not that we know of. We heard, and this is part of the reason -- you're asking me why we became concerned with the drug problem. We had heard that he had a

problem with drugs, but we have no evidence to that effect.

MISS DUBOIS: Objection, your Honor. We asked about this, the whole grand jury matter on discovery, but were never told that and we were never given the grand jury report and we were told it was irrelevant.

THE COURT: He said that they didn't obtain any evidence of the drug problem, right?

THE WITNESS: Yes, absolutely.

THE COURT: Go ahead.

A (Continuing) Now at the time that we made the recommendation -- that the recommendation was made -- we retained Solomon Hoberman --

MISS DUBOIS: Could the witness speak up a little bit.

THE COURT: Yes, why don't you sit forward? The accoustics are bad. All these people have to hear you.

You retained Solomon Hoberman and he had just retired from the City personnel?

THE WITNESS: He was the personnel director of the City of New York, Commissioner Personnel.

THE COURT: Then what?

THE WITNESS: And as a result of some recommendations that he made, we decided to do two things:

Fist, that we could re-evaluate our entire

medical standards for the Transit Authority. In the course of doing that, we also felt that we should contact the various private sources, as well as various government agencies to determine what standards were being used in the City to hire people.

Now, I had pointed out that we were having considerable trouble with our turnover, and this tied into the need for skilled people. And we re-evaluated four standards, made a number of changes in physical requirements, and at the same time eliminated aspects -- well, let me put it this way:

Prior to this all Transit Authority standards had been for men only and we eliminated all references to male only.

MISS DUBOIS: Had been to what?

THE WITNESS: To men only. We eliminated all reference to men only and put the whole standards on men or women.

And in the course of that, of this investigation, there was a growing concern in the Authority about the rising number of drug use. Dr. Iannetta had practiced in Harlem and had a lot of experience with drug use and was calling to our attention this rising number of this survey, we asked that we also contact private companies and government

agencies to find out what their experience was, and what they were doing about it, the employment, or what they were doing with people who were employed and were found using drugs.

Now, that was our first contact, and this, as I said, was the result of this summer of turmoil, our accidents our assaults on our bus drivers and a rising crime in the subways, and also the experience for the first timein the Transit Authority of drug use.

Now, from that we begin to say, was there any way that we might determine before we hire people, or at the time of our examinations, if a person was a drug user, and Dr. Lanzetta had found that the Army, I believe it was, had developed a urinalysis and we put this in at the Authority.

Now, when we first started it, we started it on an individual basis, and we only used it for certain periodics, examinations on a periodic basis, and then we gradually extended it so that within six months we had it on all of our examinations. Now, we used that on the basis of --

THE COURT: This would apply to applicants?

THE WITNESS: Applicants and examinations, promotional or periodic examinations.

Let me explain what periodic examinations are. We have certain title because of the critical nature of the

title that we examine on a one or two year basis depending on the age factor. And some are three and some are five.

THE COURT: I don't want to interrupt you, I think that's pretty well stipulated and I am generally aware of that.

THE WITNESS: All right.

THE COURT: But it was at this time, in other words, after the summer of '68, and these considerations you started using the urinalysis as part of this?

THE WITNESS: We started this very gradually so we would get to know how to use it and gradually we put it throughout the entire system..

THE COURT: Okay.

THE WITNESS: And oddly enough we found after we had been using it for several months, that we were the first agency outside the U.S. government, either private or public, that had used the examination, the first one to use it and we have figures that go back to January 1, 1971, I would say more complete than anyone else in the City of New York, and I would say probably complete.

Completer than anyone in the United States except the services, and we have kept them by title and we know pretty much what our drug problem has been.

Now, we look at this drug problem in two areas

One of course is the hiring of people, or the appointment off the list, and the second is within the Authority, and we found at the beginning we had a significant number of referrals.

Now, that is, people for one reason or another were referred to the medical department because of their odd behavior. It might be they had fallen asleep, their attendance was poor, their performance was poort, there appearance and so forth.

At the beginning, of course, our supervision did not know what it was, all they were was they were confronted with something new.

I'm sure it has been pointed out that the rule on drugs had been in the Authority for many years. Dr. Lanzetta tells me he had been there for 20-some years and he had actually not encountered drug use until in the year of '69 and '70 when it first started.

THE COURT: Let me see if I am clear. At this time you began to have a significant number of what you call referrals, the supervisor notices drowsiness or odd behavior?

THE WITNESS: Yes, performance, resulting in their performance.

We also found that as the initial screening

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started on the hiring, that we were running better than five percent of persons that we examined under 35.. We did not examine over 35. But for people under 35--

THE COURT: Are you talking about new applicants?

THE WITESS: New applicants.

THE COURT: Okay, what's that again?

THE WINTESS: Over five percent for both the clerical or administrative people, and for the hourly people were running --

THE COURT: This is not clear. For applicants under 35 years old you found what?

THE WITNESS: That it ran over 5 percent for positive on our examinations.

THE COURT: Positive in what way?

THE WITNESS: It showed drugs, where they were positive in the urine tests. This is for a series of drugs, but most were heroin users.

THE COURT: Okay, go ahead.

THE WITNESS: On the periodics, or on the referrals, now, actually, it ran around 10 percent, but there were much fewer referred than there are in the appointment area.

THE COURT: Of the referral, about 10 percent

were?

THE WITNESS: Were positive on drugs.

Now, if you look at the entire period from January to date --

THE COURT: January what?

THE WITNESS: January 1 of '71 to date, we are running over 600 people we have identified as drug users.

THE COURT: Let's see, 600 people. Are they 600 people that were existing employees or 600 people including applicants?

THE WITNESS: All. All people. Applicants and

The applicant -- the degree or percentage of applicants that are drug users have dropped off. Where it was 9 percent or thereabouts, they have dropped off to about 4 percent. However, we are informed by people we talk to that the use of heroin is increasing again in the city and all over the United States for that matter.

Q Having found this condition to exist, by means of the examinations you made, what did you do?

A Well, we instituted a series of seminars in the Authority and brought people in from various agencies in the city to talk to us about the problem, not only -- not any small group, maybe fifty, sixty of our key people attended these, and these have continued to date.

Secondly, we have attended on a substantial scale, conferences by various organizations, personnel, commerce and industry, business, Cornell University. We have sent our people there to be informed on problems of drug use, and as a matter of fact, one just returned from Canada, Montreal, recently.

The third thing is our medical department attended conferences and I think they can testify to that, but an educational process.

In addition, we visited a number of clinics in the city, seven or eight or more. I visited three or four myself. We talked to what we consider some of the very knowledgeable people in this field, and the next thing we did --

Q Who, are they, do you recall?

A I have a list, if you wish. I think that would be the best thing. The next thing we did is that we retained a consultant. The reason we retained a consultant as the number of people, drug users, increased, and the problems were manifest in the work force, we had discussions with our union--

MISS DUBOIS: I am sorry, I can't hear you.

A We had discussions with our unions on it.

THE COURT: Let's try to have the court quiet

and that means everybody as much as possible, sit quietly. It's very difficult to hear.

MISS DUBOIS: Could the reporter read back the beginning of that last answer?

(Record read.)

THE COURT: Okay, go ahead.

A This of course tied in to the disciplinary factor, and in contrast to some of the other industries that are just now working with their unions, we started to work with our unions back in 1970, '71, on this problem, and it was agreed that in order for us to have confidence in the procedure we were following and the tests we were using, and to make certain that the employees were getting a fair shake, we would jointly -- no, not at the beginning, we would, the T.A., find a consultant, and once we found one, we would tell the union who he was, and they could check him out, and if acceptable, why, we would use them.

We then used a man by the name of Dr. Baird, and I did not know him, our own doctor selected him, and he was our consultant for about one year.

Now, his role was this.

Q Did you learn something about his background?

A Yes. It became controversial and the reason is he was a believer in the "cold turkey" method. He felt that

that people should abstain. He had a clinic up in Harlem, and, of course, he was controversial as far as the methadone people were concerned because they didn't believe in some of the things he advocated.

However, he is a well known man, an expert in the field.

After -- what we used him for is this:

We find that while some people, it was obvious they were using drugs from positive findings, there were others that we weren't certain about, and they were sent up to him for verification. There was another factor why we used him and that is that we found a rising incident of quinine in the urine, and there was no other evidence in the urine, but there was evidence in the behavior and other physical markings, so they were sent to Dr. Baird.

As time went by, there was considerabl criticism of Dr. Baird, and the union requested that we use another consultant, and as a matter of fact, they suggested that they would like to see if they could find one.

Now, Dr. Dole had been a witness for some of the employees, and Dr. Dole had made an impression on the union, and they knew of his reputation, and they went to see him about being a consultant for both of us, and we made a -- as a result, we had a meeting with him, myself, and the

president of the Local 100 and other TWU offices, and in his office he decided that he could not serve as consultant he did not have time, but he suggested that we see Dr. Gollance at Beth Israel.

We went over to see him and it turned out that he was very interested in the Transit Authority because his father had been employed as an electrician with us and he knew quite a bit about the Authority.

THE COURT: How do you spell Dr. Gollance's name?

THE WITNESS: I believe it is G-o-l-l-a-n-c-e.

(Continued on next page.)

A (Continuing) He also had appeared in one of our seminars as a speaker.

THE COURT: I tell you, I don't like to interrupt you, but we got a particular focus in our case, and that is the policy of the T.A. about whether or not to hire methadone people, or hire past drug users. We are trying to save your time and our time. What I am particularly interested in is whether any -- during this time there was any consultation within the T.A. or with these consultants about what your policy would be? I am interested in distinguishing that from, say, referring to Dr. Baird or somebody, just to find out whether somebody -- what the results of the urine test and whether it is positive or negative.

In other words, I guess I'm trying to distinguish between the things that you did to decide what our policy should be rather than just the enforcement of your policy.

THE WITNESS: Fine, all right.

MR. SUMMERS: I think he was getting to that, Judge.

THE COURT: Okay. Just go as quickly as you can to it.

Q You were talking about Dr. Trigg. Do you want to pick it up then from there?

A As a result Dr. Golumbe referred us to Dr. Trigg, and they agreed to act as consultant for both the union and ourselves, and we worked with him since.

Of course, this is a methadone clinic. They also use other methods as well. As to your question, throughout this period of time, there was considerable discussion within the Authority and especially within my own staff.

Dr. Lanzetta was advising us on the increasing incidence of the use of drugs. We were ourselves groping for a policy. We had not been confronted with this problem in the Transit Authority. We know we had the rule and --

THE COURT: That's Rule 11B?

THE WITNESS: Yes, we had the Rule 11B. We didn't hire people who were drug users as a policy, we had been, as I said -- when first the incident arose, we asked Dr. Lanzetta in his survey at the time in 1969 and '70, when we reestablished our medical standards to try to find out what the rest of the industry was doing it and how they were handling it, we were attending these various conferences we had the people in to speak to us for the purpose of understanding the drug background.

The result of that was we were having conferences well, we have staff meetings every two weeks, and for a long

period of time , and every staff meeting, this was one major point of discussion, not only in my department, but on our executive officers' group.

Not only has it remained a constant source of discussion, but it continues to this day. We had a very long discussion in our executive officers meeting just recently, within the last week or so.

THE COURT: Specifically, what, if you can think back and give me obviously not week by week, but what was the trend of the dicussions on the subject that I asked you about?

THE WITNESS: The question comes up as to whether it is possible to employ people who use drugs or to continue them in employment, where we would put them, what jobs they mignt be put on, now you come to grips with the problme of a drug user, and one title, how it relates to another.

As an example, some city offices and I have had long discussions on the question of how we would determine in a job survey whether or not our titles -- that people could be hired into our various titles. As an example, we made surveys on one, what percentage of our jobs are on the average shifts, what percentage of our jobs require an immediate replacement.

An example, as bus driver. The route goes 24 hours a day, a man is on a job, he must be replaced or the bus doesn't go out, and we lose service. Second -- third, that the motorman, for instance, the motorman is not a single entity. He is a part of a team operation. He is controlled by a tower, he works with the conductor, he depends on the track operations or the road car inspectors.

THE COURT: What does a motorman do?

THE WITNESS: He drives the train, he runs the train.

THE COURT: What is the difference between a motorman and a conductor?

THE WITNESS: The conductor handles the passenger part of the train. He sees the doors are open, in the station properly and ready to leave.

THE COURT: Does the conductor stand on the platform?

THE WITNESS: No, he usually stays in the car and leans out to see, for instance, if the passengers have cleared out or in.

THE COURT: Is the motorman in the front car?

THE WITNESS: He is in the front car.

THE COURT: So you will have one motorman on a train?

THE WITNESS: You will have one motorman on a train and one motorman in the car, usually about the 5th or 6th car back --

Q One conductor, you mean?

A Yes, and you will have a conductor on the platform on busy hours, for instance. So you will have a platform conductor, a road conductor and a motorman. Then on the platform too you have the ticket taker or the railroad clerk who sells the tickets and porters. But they operate as a unit.

In other words, there is a great deal of dependency, and the link cannot be broken.

Now, we also had made --

THE COURT: Just coming to the precise point, did you consider -- it isn't such a long time starting with, say, 1970 until now, have you considered during that time the possibility of hiring people on methadone maintenance programs?

THE WITNESS: Yes. That's why we went to the methadone clinics, and that's why we talked to men like Dr. Dole and Dr. -- and Trigg, and so forth. I contacted -- talked to Dr. Trigg right along.

THE COURT: Did you talk to Dr. Trigg and Dr. Dole about the possibility of hiring the methadone patients

THE WITNESS: Yes, and we went into the civil service function, and when --

THE COURT: When you say, "went into the civil service function," what do you mean?

THE WITNESS: Well, let's talk about the civil service hiring. We don't hire people in the sense that we could go to a clinic and say we will take some methadone patients. We go to a list. This is required, as you know, by law, and we take the top man on the list. That's the man that's entitled to the job. He may have a drug problem. He may be a methadone man, but he is not certified by a reputable clinic as having overcome his habit or -- in other words, he is not certified.

I took the liberty of reading Dr. DuPont's testimony, and I believe there was some testimony about the certification, and this is an area we found there is great differences of opinion in the city of New York.

Prior to the drive to use the methadone treatment as a means of getting people off the streets, that is reducing crime, the thrust of the major clinics, the reputable clinics, was to establish a system of certification so that when an employer hired a methadone patient or a man in drug treatment, it could be certified that he had altered his personality or altered the reasons in his behavior that

caused him to be an addict. But that went out the window. All the efforts of men like Dr. Wiggins and others in the city of New York were thrown out as the drug clinics started up in the city and it became a political football. At least this is what I hear from one version.

I think you will note that the federal government has had to crack down upon the abus of this sort of treatment. We found in talking to people in the methadone as well as other groups that it is complete confusion.

THE COURT: I understand you have your procedures and maybe you couldn't act like Chemical Bank or Con Ed and just say "We will take 2 methadone people that you have selected." You have to -- someone applying for employment at the T.A. has to take his civil service examination.

THE WITNESS: Right.

THE COURT: He has to get on the list?

THE WITNESS: Right.

THE COURT: The only thing I have -- not the only thing, but the thing I have a question about medically is if somebody goes through the examining process and the ranking process, and whatever goes on, and then he gets to the point where he is passed all that, and then you find out that he is enrolled in a methadone program and has been for, say, two years now, he wouldn't be avoiding your

employment procedure, but you would at that time at the point you were making a final decision on him, you would give him a medical examination and you would probably find methadone in the urine, and you would find out about this.

What is it that would prevent you from considering whether he could be employed, say, as a bus cleaner? Let's go away from the motorman a minute. Let's talk about a bus cleaner.

THE WITNESS: Okay, let's talk about a cleaner. A bus cleaner, or a car cleaner, they are the same.

THE COURT: Any kind of a cleaner. He wouldn't be violating your employment procedures because he has passed all of them. Okay?

THE WITNESS: We decided to put a man that's questionable or a risk in that area. First, most of our cleaners work at night, not the daytime, but at night we do our cleaning. From what we understand, and at least it was told to us by the SBera group, that it was not wise to take people who are out of the methadone clinics and put them on nights.

MISS DUBOIS: I object on hearsay grounds.

THE COURT: No. This is part --

THE WITNESS: No, they told us that.

THE COUR: Wait a minute. I will rule on the

objections. The objection is overruled.

Go ahead.

MISS DUBOIS: Can I have the answer again?

THE WITNESS: We have to go to the nature of our operation. We don't have large groups of people, they are in a very small minority, who work in large clusters Our people are spread all over. They are not closely supervised. A cleaner is a good example.

For instance, a car cleaner in the trains will start maybe at one station and clean cars that are parked for eight -- maybe to the next station which may be eight or ten blocks away. No supervisor is watching him. He is doing this at night.

THE COURT: Would he do it while the car is moved?

THE WITNESS: No, the cars are not moving. They are parked there for cleaning purposes of that nature. So they are unsupervised.

THE COURT: I don't see. What does he do, there are cars --

THE WITNESS: They go inside and clean the car, sweep --

THE COURT: What is the physical, geographical arrangement? Where are these things parked?

THE WITNESS: They are parked in the yards at night. They are pulled off, we don't have the service at night. The cars are pulled off.

THE COURT: He cleans them at the yard?

THE WITNESS: He cleans them in the yard, yes, where they are stored, and so are the buses, where they are stored, and I won't go to the buses, I will go to that later

They are unsupervised, really, in the essence of someone watching them. They don't like the bank where people are there to see them. They also are -- it is dangerous outside the cars when they start wandering around there is the third rail there. So what we are saying is that if you look at the Transit Authority, you are not looking at a group of employees that are closely supervised Lots of our people are literally unsupervised.

We depend upon the honor system or the buddy system. For instance, take the railroad clerk. They are in a station. There is no supervisor in that station. There may not be a supervisor within two miles ofhim. This is true of almost all of our titles.

Q Now, how about about the porter?

A The porter the same way.

THE COURT: What does the porter do?

THE WITNESS: The porter is in a station where he cleans the station, he also assists passengers, he helps on the platform, he relieves the railroad clerk, gives help directions, and this sort of thing.

In the event of an emergency or accidents or a passenger throwing himself under the car, he helps in those circumstances. He, of course, does other physical work such as keeping the streets or steps clean, things of that nature, free of ice, and things of this nature.

Porters do, and you can see it all the time, they are helping women with children and bags and all this sort of thing, old people, handicapped people. It is part of their job.

THE COURT: My question to you was this, that -- you see, the problem we have got in this case is what appears to be a blanket exclusionary policy. I don't think -- my question would be that could you not consider on an individual basis the -- let's stick with the methadone patient. Could you not consider on an individual basis the present methadone patient to see if he would be capable of performing some of your jobs, and let's stick to the car cleaner as an illustration.

Granted, all you say, which no question about -- I don't question that -- but granted all you say, can you

really say -- can you say that there would never be a metha done patient who could perform satisfactorily that job of car cleaner? Let's suppose the man had some maintenance experience in his background, he had gotten on to heroin, become addicted, he had gone into a methadone program, he had been on the methadone probram for two years, it was one of those -- I mean he was being counseled, he was being checked. He had a record, a urinalysis record going back a year and a half and no evidence of use of hard drugs, he had a family.

The methadone clinic agreed and he agreed to have urinalyses on a regular basis. You wouldn't have to perform it, they would. Why could you not at least consider employing him? You might find reasons to reject him, but it is the blanket policy, you see --

THE WITNESS: It is all the "ifs", it is all the "ifs" in your explanation that bothers us.

You know, if that, if such, and so forth and so on.

THE COURT: I don't think my "ifs" are too hard, Mr. McLaren, and --

THE WITNESS: They are, but they are.

THE COURT: You're talking about the overall.

THE WITNESS: You see, I think that's the

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essence of the problem. We have to look at the overall, and we are charged with running the system and the risk we are responsible for, such as two weeks ago or three weeks ago in the Clark Street incident.

We are responsible for that and we are held to account. And when we have looked at our system, the night jobs, for instance, and you talk about the urinalyses, how do we know what's happening to employees at night, and all the employees start at night.

This is the way they have to, under our agreement. How do we have a practical control of that situation? How do we do it when they are scattered all over a system, all over the city. They are not concentrated in an area. They are not being supervised. There are all these "ifs".

Obviously I will agree with you, if everything falls into place, it is great.

THE COURR: I am not really putting it that way. I have heard testimony for three or four days here, and I don't get the idea that what I posed is a particularly rare -- is it not a, you know, rare as a Russian sable around here.

It maybe -- the cases aren't by the 10,000, but there are some cases like this, and the people have gotten -- apparently there are people who get on -- they

get sick and tired of the devil trap of heroin, and they do want to pull themselves up and about the only way they can figure out to do it is to go on one of these methadone maintenance programs, and they are doing the best they can.

They have tried other things and they can't make it. So they go on methadone, and I have heard testimony that there are people who -- there may be a breaking-in period that can last a year. But after at least a substantial period of time there are people that are on these things a substantial period of time, and there would be people like the kind I supposed.

And you wouldn't -- my only question is, why would it be asking too much of the Transit Authority to simply see if there are any of these people? If nobody comes along that meets the criteria, then nobody comes along. If the people that come along have only been on methadone for six months and they are still taking heroin every little bit and there are -- no suggestion that you have to take them. What is to prevent you from considering it?

THE WITNESS: Again, the overall.

THE COURT: I don't understand "the overall."

THE WITNESS: One aspect is our own problem and the other is the reliability of the information that we

receive on the patient.

THE COURT: Let's come to that. What's the problem about reliability?

THE WITNESS: Well, in the first place, what do we get from a clinic?

THE COURT: What do you get from a clinic?

THE WITNESS: Nothing.

THE COURT: Have you tried? Have you asked a clinic--

THE WITNESS: It is considered confidential information.

THE COURT: Well, now, look. Have you gone to any clinic and asked what you could get from them in the way of information? Have you tried?

THE WITNESS: No, we haven't. We know what their attitude is, though. We know what their attitude is about the medical records. They are not available.

THE COURT: In this litigation, there was some problem about medical records because their --

THE WITNESS: There is in this city. There is no certification board in this city. The methadone people run from that idea. The question of the validity or the reputability of the clinics is another matter. You put us in a position of determining that. The government until very late

in the game doesn't step in and police the situation. As I said, I don't -- and I believe it from what I believe in the papers and the men who have stated it, and all of that, that there are very grave questions about the whole reliability of how methadone has been distributed.

That's another aspect of it.

THE COURT: We are not talking about the carefree distribution of methadone. We are talking about a situation where a -- let me just ask you this:

Has anybody at the Transit Authority -- I guess the answer is no -- you haven't been to a methadone clinic to find out what information they would give you?

Let's assume they would give you the record of -- let's assume it was St. Luke's Hospital or somebody like that, and they would give the results of urine tests to you for a year before the fellow applied, and all of those urine tests showed negative.

Isn't that information coming from a hospital that would mean something to you?

THE WITNESS: Well, we have asked for records. We have not been able to get them.

THE COURT: What kind of records have you asked for?

THE WITNESS: Medical records.

THE COURT: From whom?

THE WITNESS: Clinics.

THE COURT: I think there is a little confusion, because the testimony I have heard, and I haven't heard -- nobody has shaken them on cross examination -- is that the Beth Israel program which handles, I don't know, 6,000 or something people, they do provide upon -- at the time of the application they provide basically all the information that they have about the person.

His drug history, the medical information about how long he has or has not been drug-free and criminal record, everything they know, and that they would, because they do it with Con Ed, they would provide regular statements of the results of the urinalyses which goes on, they would report any development that was really needed by you. That's the testimony I've got.

THE WITNESS: Beth Israel is a very reputable place. No question about that.

THE COURT: Okay, now, you see --

THE WITNESS: By the way, did you ask them what their rate of success was?

MISS DUBOIS: Your Honor, I am having trouble hearing again, I'm sorry.

THE WITNESS: Did you ask what their rate of

success was and their treatment at Beth Israel?

THE COURT: I think somebody asked and I don't think it was anything very significant came out.

MR. SUMMERS: I think the last witness gave statistics which would give any employer pause, but this may be a matter of opinion.

MISS DUBOIS: Objection, your Honor.

THE WITNESS: I think if we are going to talk about Beth Israel we should talk about their successes or failures.

MISS DUBOIS: Objection, your Honor.

THE COURT: I'm really not -- this is getting to be maybe a little out of the questioning, so be it.

THE WITNESS: I felt it very stimulating.

THE COURT: I am not even suggesting to you, and I am not deciding the case sitting here, but I wouldn't suggest to you at any time, now or at any further time, that you hire somebody that would be called a failure.

THE WITNESS: I know that. There is no thought in my mind that you would do that, because you live in the city and you ride our subways, and everyone understands the operation of it. But I do believe that many do not understand the original makeup of our systemn and the fact that so many of our employees, the vast majority, are not

supervised, and are around alone or they work in dark tunnels. We don't have the conditions that you find at the insurance companies that we have talked to. Believe me, we have agonized over this, we have talked about --

THE COURT: Tell me more about the agonizing. I really want to know what you have done. Tell me everything you can about what you have done to consider it.

THE WITNESS: In the first place, people like ourselves in the personnel and labor area work directly with people, their problems, and things like that, and we work with people that represent them. So we couldn't be involved in programs that result in the termination of employees or the rejection of employees without having great numbers of discussions, not only among ourselves, but with the union.

THE COURT: What about those men?

THE WITNESS: As I said, we have looked at our safety problem. Our safety situation is like this:

On frequency, we are the second most dangerous industry in America, only exceeded by the coal industry. On severity --

THE COURT: What do you mean, frequency? Frequency of accidents?

THE WITNESS: Accidents, lost time accidents.

On severity, length of the accident, I think we

are tenth or twelfth in the U.S.

Someone said beforehand about the sheet metal industry, and they are like a little pond compared to our operation. We have lost almost 260 people since 1946, employees. We lose a great number of passengers, especially those who jump under the trains, and thigs of this this nature.

This is a very dangerous operation. I don't think I have to impress that on you because you live in the city and know that. We are always constantly faced with that. Maybe we lean too far in the area of safety. Maybe we think more of the passengers than the individual Our employees are concerned with safety, and, of course, we get plenty of pressure from our unions and our unions' safety committee.

So that is always in consideration. Secondly, as I said, we have looked at our titles, we have looked at the safety record, the accident record, what happens, how the -- you know, the afternoon makeup, the weekend makeup, the supervisory situation, the helper situation, the passenger contact, where they work out isolated or where they work fairly supervised.

We have gone over this thing backwards and forwards. We have gone over it from the human point of view, because

no agency in the City of New York comes anywhere near the Transit Authority in their personnel field.

THE COURT: The thing that led me to ask -- you see, I was not -- it has been stipulated something that seems to me frankly contrary to what you say. It has been stipulated in the case that the T.A. has never studied -- page 18 -- the T.A. has never studied -- page 16 of the book -- the T.A. has never studied the requirements of particular T.A. jobs to determine the present ability of persons with the prior history of drug abuse, including persons participating in methadone maintenance programs, to perform the various jobs.

THE WITNESS: That may be used in the sense of the Civil Service study, but not in --

THE COURT: No, sir. Then they go on and say that nobody in the Civil Service Commission has done such a study, nobody in the Department of Personnel. Now, this is a statement that "The T.A. has never studied the requirements of particular T.A. jobs or groups of jobs to determine the present ability of persons with a prior history of drug abuse, including persons participating in methadone maintenance programs to perform the various jobs."

Frankly, Mr. McLaren, what you say to me just now seems to me completely different from what the attorney

have stipulated in this case.

MR. SUMMERS: May I interject here to ask Mr. McLaren a few questions?

THE COURT: No, I don't want any interruptions. I am not trying to get into an argument. I want this thing clarified.

THE WITNESS: I can't clarify it. I can tell you what I know.

THE COURT: You tell me what you know.

THE WITNESS: I couldn't have dialogue with the City of New York, thePersonnel Department, without knowing what we are doing.

THE COURT: What is it, who did you have discussions with --

MR. WITNESS: Mr. D'Ambrose.

THE COURT: Did this relate specifically to the employability of people on methadone maintenance programs?

THE WITNESS: No. It related to the question of studies that were to be made by a joint group of the T.A. and the City, and this would be a formal study, and the questions that was before the parties was the question, should we do it independent of the Civil Service examination procedure or should it be part of the Civil Service

examination procedure. It was decided that it would be done at the time of the examination because -- to try to conduct two studies at one time would interrupt the Civil Service examination procedure.

THE COURT: That man is the head of the Civil Service Commission now?

THE WITNESS: He wasn't at the time.

THE COURT: What is his name?

THE WITNESS: Mr. Alphone D'Ambrose.

THE COURT: About what time were these discussions going on?

THE WITNESS: A couple ofyears ago, I would say

THE COURT: What was the decision?

THE WITNESS: There was a difference, you know, we were trying to figure out how to proceed, and this is where we came up with the conclusion that we could not do it job by job, that you would have to do it as an interrelated series of jobs, because a motorman does not stand alone

THE COURT: You say you couldn't do it?

THE WITNESS: We couldn't have this sort of a discussion where we were presenting our point of view to the City unless we had given thought to this. We had given thought to it before that.

THE COURT: What I am confused about is you say -- you referred to a study, or something like that. Was there a discussion of making a study about the employability of methadone maintenance people? Was there a discussion with Mr. D'Ambrose?

THE WITNESS: I believe this is the results of your case, or something. Yes. The answer was yes.

THE COURT: Just go ahead.

THE WITNESS: Excuse me. Your question was what?

THE COURT: You know all about it and I don't. That's the trouble. I've got to find out more details. Was the discussion with Mr. D'Ambrose about having some study about the employability of methadone maintenance patients?

THE WITNESS: I don't know that it was strictly methadone maintenance, but it was a question of the employability of this whole area of drug users. Somehow or another we got, you know, around to only methadone, and at the beginning we have always looked upon this -- not only methadone, but abstainers. That you may recall was the dispute between Dr. Dole and others who advocated methadone and Dr. Baird who did not.

THE COURT: Then the study was about drug uses?

THE WITNESS: That was my understanding.

THE COURT: This discussion with Mr. D'Ambrose was on that subject, and that a couple of years ago, is that right?

THE WITNESS: I believe. It could have been last year.

THE COURT: What was the conclusion from those discussions?

THE WITNESS: The conclusions, when and if we made the study, would be done on a related basis.

THE COURT: Relating jobs to each other?

THE WITNESS: Yes.

THE COURT: In the way you talked about?

THE WITNESS: Yes.

THE COURT: That's fair enough. You say when and if a study was made. What was the decision, to make a study or not to make a study?

THE WITNESS: I don't think it went beyond the discussion point. I don't think any decision was made. I don't recall if there was. I don't remember. It was sort of left at that point.

THE COURT: This was a couple of years ago?

THE WITNESS: Yes.

THE COURT: Was it that -- why was that?

THE WITNESS: I believe the City --

MR. SUMMERS: Your Honor, do you recall that --

THE COURT: Please, just let me --

THE WITNESS: I believe the City, you know, the Lindsay administration in the last year or so had established a policy on drugs, and to go back to the technicalities of the Civil Service, our titles -- most of our titles are not City titles, City-wide, they are called, and the question that didn't relate to that -- the policy didn't cover these titles, even in the eyes of the City.

The question came up if we should apply the City titles to the T.A. titles, and we had some discussion that if we did, how we would set up the studies.

I assume that the City must have studied their own titles to determine this, and I don't know that either. I assume that they did, and they apparently did it on a title basis, and we had a discussion on if we should do this at the T.A., if this was applicable, how we would do it there, and it was our point of view that it would be done on a job-relatedness rather than a single job title.

THE COURT: You say most of your jobs are not City-wide titles?

THE WITNESS: Yes.

THE COURT: So you have got your own -- do I understand it that the T.A., for its own jobs, has not

undertaken any study of the employability of the drug people, either on an inter-related basis or individual basis?

THE WITNESS: Not in that formal sense. You're talking about, I believe, in this sort of a study.

THE COURT: I am not really concerned, as I told the lawyers, I am not concerned with the formalities, but I want to know what has been done in an informal sense.

THE WITNESS: As I said, we have and have had many discussions, and our people, the people I'm talking about, are very familiar with our titles and their work, and we have constant discussions on it, and we have gone into the question of -- we developed a series of papers, so-called position papers, on a policy if we should hire drug people, what standards we should use as to their police record, their employment record, how long they have been free of drugs, their medical history, and all this sort of thing. We have looked at the various titles.

THE COURT: Who prepared the --

THE WITNESS: People in the personnel department for purpose of a discussion on an agenda, and so forth.

THE COURT: Do you have those papers?

THE WITNESS: I don't know whether I have or may have -- I may have them or may not.

THE COURT: And can you tell me anything about when they were developed?

THE WITNESS: Well, at that time, and of course we have never thought it otherwise, that if we were to get into this at all, it would be on a clear program of abstinence, not methadone.

THE COURT: Wait a minute. I just want to know when were the papers available?

THE WITNESS: '71, '72, '73. It's just continuous discussion. We had last -- within the last two weeks a very long discussion on the question of the bus driver and the people who had abstained for numbers of years, whether we would consider that. That was an executive officer meeting.

THE COURT: What was that?

THE WITNESS: We would not in the critical pattern.

THE COURT: In the bus driver pattern?

THE WITNESS: In the bus driver pattern.

THE COURT: Well, I'm saying -- I thought maybe I could get -- I'm frankly not clear about the substance of these discussions, but maybe because it is I'm asking questions. Why don't you take over. Try to focus on the -- I'm not interested really in anything except the discussions and considerations on the question of whether you employ past

drug users, or present methadone users, right?

Let's go into that as best we can.

BY MR. SUMMERS:

Q Let me start by asking you, is it your testimony that while no formal study was undertaken and reduced to writing, respecting the employability of persons using drugs, giving attention to each title, like a field survey, and all this, never-the-less you did have many discussions as you indicated respecting the employment of drug users, including methadone maintenance patients, is that correct?

A Yes.

Q Now, I think you mentioned earlier that you had a list of doctors?

A Yes.

Q And others whom you talked with and spoke with about this problem, if I can call it that.

This paper that you have given me is a listing by date from 1970, November 25, 1970 through October 25, 1974, of meetings you have had with various individuals, seminars you have held in connection with the employment of drug users, including methadone patients, is that correct?

A Yes. About it on and off our property.

MR. SUMMERS: I'd like to offer this in evidence.

MISS DUBOIS: May we see it, your Honor?

MR. SUMMERS: I don't have another copy, but you may have it.

THE COURT: Listen, we are not going to take time to study it. Let's just receive it and then you can study it. It's his testimony. These are the people he consulted.

MR. MORRILL: Your Honor, there is a very serious question with respect to discovery in this case as to those names.

THE COURT: We will come to that.

(defendant's Exhibit H for identification, received in evidence.)

Q Now, as best you remember or can recall, would you tell us just what was the substance of your discussions at any of these seminars or at any of these conferences or meetings with other doctors; what was the substance of your discussion respecting the employment of a methadone patient?

In other words, what were you told about a methadone patient and if you can recall, give us the source of the information as to his employability or non-employability or characteristics which might, in your judgment, interfere or -- or interfere with his employability?

A One area we discussed was the rate of recidivism, I think they call it, and the experience with alcohol, a particularly difficult problem for us, and we found the rate

of successful re-entry into life was very low.

MR. DALTON: Excuse me, your Honor. Who is "we"? This isn't very helpful.

THE COURT: Please, I think we have to have one person speaking for the plaintiffs' side. Is it going to be you?

MR. BALBER: No, your Honor, Miss Dubois.

MISS DUBOIS: Would you specify who that is?

THE WITNESS: I'm speaking of T.A.

MISS DUBOIS: Do you mean you spoke; Dr. Lanzetta spoke?

THE WITNESS: It would be my own experience for me. I have a habit of speaking of "we".

THE COURT: Go ahead.

A (Continuing) The other factor was the problem of discipline, which is a difficult thing for a public agency to handle. In talking to other companies that have -- private companies, we found that their disciplinary procedure was rather simple and in the even that employees did not adhere to the program it was fairly easy to remove them from the payroll.

This becomes a very difficult thing for us and very often employees who have trouble continue on and on and on before they go through all the various requirements.

Q Why is it difficult to remove an employee from the T.A. payroll?

A Statutory requirements.

Q Are you referring to adversary hearings?

A Adversary hearings, trials, appeals, so forth and so on.

Q How long may, say, an average case take where you prefer charges, until --

A Year or more.

Q In the meantime the employee is either working or suspended or in some status?

A Very often working.

Generally speaking, what we talked about was the reliability of this whole question of the treatment, and Dr. Trigg gave me some recommendations on a certification program and pointed out that the failure of -- I don't really know whether it was a political decision or what, but the failure of the medical profession or the drug agency in the City of New York to follow a certification program raises the whole question of whether or not anyone coming out of these clinics really had any sort of treatment.

Q When you talk about a certification program, are you talking about some body or agency or recognized group that would undertake to certify to employers the acceptance

of methadone maintenance patients, is that what you're talking about?

A Yes. What was hoped at the beginning, as I understand, was that there would be some policing of the various methadone clinics or the other clinics or for that matter, all drug treatment programs, once they became proliferated not only public clinics or hospital clinics, but private clinics and clinics that sprung up almost as political appointments, and this body of medical people would then certify whether or not persons who were being discharged by these clinics had actully received sufficient treatment.

Q Are you pointing to the fact that there would be some agency or body independent of the maintenance program?

A Yes.

Q That would give you the assurance or certification that this individual had been sufficiently rehabilitated so that he could do this particular job which he was seeking? Is that what you're saying?

A Certified that the clinic had a reputable program.

Q And the individual coming out of it?

A And the individual, yes. Yes.

Q And you say that aborted that program?

A As I understand, that was one aspect that was discussed. In the visiting of the clinics we talked to the

doctors and the patients, we found out, of course, a great deal about the drug users and their lack of maturity, and one of the points that impressed me most was that in talking to people in the treatment, people who may have gone on drugs when they were 14, 15 years old, they all stated that that drug period, when they were under drugs, was really a lost period in their lives, there was no maturation or increase in maturity, that it was a lost period, and if they went on drugs at 14, come off at 20, 21, 22, they really were back at 14 years old once they had begun to function or back as a normal person.

THE COURT: Who said that?

THE WITNESS: Patients we talked to.

THE COURT: Who talked to them?

THE WITNESS: Phoenix House.

THE COURT: Who talked to these patients?

THE WITNESS: I did.

THE COURT: How many people did you talk to that said that?

THE WITNESS: Several. Most of the superiors would say the same thing that came to us. This is one of the particular difficulties of dealing with people on drugs. It was this period of time that when they are in the so called drug culture that they are removed or remote from reality,

from the world, there is not the process of maturing and the process of developing the kind of experiences, emotional and work experiences, relationship that you or myself might develop during this period of time, and therefore, the need for this psychological and psychiatric orientation after treatment or during the process of treatment.

It is more than just a withdrawal from drugs, as I understand it. It is a process of rebuilding and the eradication or at least the altering of the reasons for the drug behavior, and this is this period of maturing, and according to Dr. Trigg, as he tells me, this period of sweating and anxiety and impotence and constipation is a natural following of this withdrawal from drugs and returning.

So, we have gone into it with the various persons, and, of course, the thing that had bothered us on methadone is that the rate of failure, the rate of return, is very high, and there are great questions and grave questions among doctors themselves as to whether there is actually the minimum ability to return to normal functioning people.

THE COURT: What information did you obtain about the rate of return to drug abuse for methadone patients?

THE WITNESS: Well, I've seen as high as 80 percent or more.

THE COURT: During what period of time?

A Well, for all patients.

THE COURT: Well, but the testimony in this case is that there is a high, relatively high rate of return to drugs in the first few months, but that it tapers off to quite low, 7 or 8 percent after twelve months. That's why I asked you earlier about the time.

THE WITNESS: Did you ask also about the returning to alcohol? Methadone people turning to alcohol?

THE COURT: No, I did not.

Q Tell us what you know about that or heard about it or learned from it.

THE COURT: Yes. Let's go to that, but I want to ask you, did you inquire about the rate of return to drugs occurring after the person had been in the methadone program for several months or a year or something like that?

THE WITNESS: Well, I really have never been competent to get into it that far. From our point of view, what we were interested in, was the rate of success as far as going to work.

THE COURT: Sure.

THE WITNESS: And the fact that a man may stay off of heroin, but turns to alcohol, or drinking more than he should, isn't of any help to us.

THE COURT: It wouldn't be of any help. But I want to take it one step at a time.

THE WITNESS: All I can say to you is that we have been discouraged by the reports that we have --

THE COURT: What have you learned about alcohol?

THE WITNESS: That the methadone patients use it rather liberally.

THE COURT: "Rather liberally," society in general is too liberal for me, but --

THE WITNESS: But not the T.A. You should be in Memphis, Tennessee, and Southern Baptist country, because we cannot stand a drinking employee.

THE COURT: What did you find out about methadone patients that indicated they were any worse than the rest of the population as far as alcohol?

THE WITNESS: We have heard that as far as adjustment, while they may not use heroin, they have gone to drinking. We have also heard about the weekend drug users, where they use methadone to reduce their drug habit to an area they can afford and they control it, in other words, the heroin they take, by using methadone on and off, and of course turn to other drugs, too. We have not had good reports on methadone.

Now, that doesn't --

THE COURT: I just want to focus on the alcohol. You see, people in the ordinary population, they drink.

THE WITNESS: Right.

THE COURT: They drink beer and so forth. Now, the question is, are the methadone people any worse on that than the rest of the people you're dealing with?

THE WITNESS: Well, one of the things we find out when we start talking about what's happened to methadone people, we always run into the blank wall or the dead end that "Look, we haven't been in this long enough to have figures except on very short range," and even when you get into that you find great differences, one group says this, another group says that.

When you get into trying to standardize, you know, 80 percent, or 60 percent, or 90 percent, or whatever it is, it is very difficult.

So, I really can't tell you. I know, for instance, if you went to Kentucky, the federal institution there, they have always had a terrible record, but I can understand that, because they are taking probably the most hard-core people, and they always have.

THE COURT: You mean the heroin?

THE WITNESS: Yes, or anybody that certifies to the police department that I am a drug user in order to get to Lexington, must be in rather difficult shape.

On the other hand, you go up to Harlem and you talk

to a person up there who is on a withdrawal program, and they are getting their money from the government on the basis of the things they are doing, and they are saying they are having wonderful success, and you go over to a methadone clinic and they say the same thing, and these people represent doctors that are running it, but if they didn't say they were having a great success, how would they get the grants?

THE COURT: Let's start, let's take that list. What experts have you consulted recently? As you bring out, time is something. When you are in the early stages of something, well, you know -- but as time goes on then more information becomes available.

Have you talked to any -- have you interrogated any methadone clinics or talked to any experts in, say, the last year?

THE WITNESS: Dr. Trigg is my consultant. I find that after --

THE COURT: What is Dr. Trigg's view of whether you should hire methadone people?

THE WITNESS: He would raise the same questions that I have.

THE COURT: Well, tell me whathe says to you.

THE WITNESS: Well, Dr. Trigg's -- let me put it this way. He tells the story of going before the Human

Rights, and when he was down there, they said, how come a man with your background and attitudes has agreed to be a consultant to the Transit Authority with their policy? And he said, "Well, first, I have met the Transit people, both the union and management people, and I have a high degree of confidence, and I think they are very openhanded, and I respect what they are saying whether I agree with it, I agree what they say. I have been to their operations. And I have been asked to go over the medical department, and I have, and I have made recommendations, so that we know that if they make an evaluation or a diagnosis, that it is the best that possibly can be made.

"Secondly, when they have any questions, either as to a man's psychiatric background or his drug use, they send him to me.

"Now, I may not be getting them to do what I like, but I feel that I am giving them the best advice that I can, and that the employees in the use of their policies are getting as fair a shake as possible.

"In addition, maybe as times goes by and they begin to feel more confident in the things that we are doing, and I get to know them better, maybe we can work out some different arrangements."

That's basically it.

THE COURT: The question that arises in my mind is this, Mr. McLaren, that we have had evidence in the case so far -- that isn't a good place to start.

Let me just -- I don't want to make any speechs -- have you, say, in recent months, attempted to obtain current information about the way methadone clinics are run in this city and the characteristics of methadone patients -- I'm asking right now, are you attempting to get updated, current information about how they are doing, what they are doing and what these people are like?

THE WITNESS: Yes, I consult regularly with Dr. Trigg. I have consulted within the last two or three weeks and I did it regularly. I have lunch with him, and he keeps me advised on developments not only here, but throughout the country.

THE COURT: Do you talk to anybody besides Dr. Trigg?

THE WITNESS: Well, I get reports. For instance, we sent a man up to the Montreal conference, and we get the Canadian attitidue -- this is within the Transit industry. And he submits a report. I received it this week. They, by the way, have a different attitude about this than we do.

THE COURT: What is their attitude?

THE WITNESS: Much harder.

THE COURT: Montreal?

THE WITNESS: Montreal, Canada.

THE COURT: How much harder? How does it get harder?

THE WITNESS: Well, for instance, their national policy on marijuana, very much different than ours, they consider it a dangerous drug .

THE COURT: What's your policy on marijuana?

THE WITNESS: The use of marijuana on the job we would fire a man. Off the job, we do not consider that a drug, and a youthful offender who was picked up by the police he we would s[illegible] him to Dr. Trigg and if Dr. Trigg certified he was drug-f[illegible] we would hire him.

A person involved in crime, distribution --

THE COURT: Wait a minute. You talk to Dr. Trigg regularly and you received the study about the Montreal?

THE WITNESS: And Dr. Iannetta keeps me informed on developments. And I attend our own conferences.

THE COURT: When was the last conference?

THE WITNESS: Well, you have the sheet, I think. I think it was this spring.

Q Do you want to look at this Exhibit H and refresh your recollection?

A I either attend the conferences or summaries are

submitted to me.

THE COURT: What was the last conference?

THE WITNESS: The last conference was -- we had one, two, three, four, five, six in 1973. And we had Mr. Conrad Mauge, administrative director -- this was the program Community Addiction Research and Treatment Corporation, Arthur Carter, Bureau of Narcotics and Dangerous Drugs, Miss Linda Aldrich, coordinator of Region II New York State Narcotic Addiction Control Committee, George Goubar, professor of psychology, consultant Mount Carmel Hospital, Miss Susan Halpern, consultant, free-lance writer and Godfrey Cambridge, actor, citizen and Concerned Citizens for Drug Prevention.

THE COURT: You personally attended?

THE WITNESS: Yes.

THE COURT: When was that held?

THE WITNESS: In December of 1973.

THE COURT: What went on at that one?

THE WITNESS: Well, Godfrey Cambridge I think represents the majority of the black community and his attitude about drugs and also about --

THE COURT: What did he say?

THE WITNESS: Well, they are very much opposed to methadone, they feel that the black nationalist attidue is that it is the white man's way of --

MISS DUBOIS: Objection, your Honor, I think he should be called if his testimony is to be quoted.

THE COURT: No, he doesn't have to be. I want to know what was said to you by anybody at that conference.

THE WITNESS: Well, he had strong beliefs that the black community should rid itself of drugs and they have to do it by their own efforts and that abstinence and they are very much opposed to methadone -- by the way, this is reflected also in --

THE COURT: Please, just limit yourself to what he said in the conference and other people said at the conference, will you?

THE WITNESS: Yes.

And that strongly opposed to methadone.

THE COURT: Did he say any reasons why he was strongly opposed to methadone?

THE WITNESS: They consider it as another drug.

THE COURT: Did he say anything about any harmful effects of methadone?

THE WITNESS: Yes, he believes it makes a person dependent.

THE COURT: Any other harmful effects?

THE WITNESS: Well, he believes, of course, the black man can become dependent as a universal circumstance.

THE COURT: Do you recall what anybody else said at that conference?

THE WITNESS: He is the only person that spoke.

THE COURT: What was -- was that the last conference before today, the December, '73?

THE WITNESS: Well, I meet with Dr. Trigg.

THE COURT: I understand that. But these conferences you're talking about.

THE WITNESS: Right, the last one. We went into negotiations after that.

THE COURT: Negotiations with whom?

THE WITNESS: With our main unions and we are still in them. We have a series of negotiations, and during that period of time, especially in the winter, we are meeting every day, we move to Americana and my management is involved in that and so is my department.

Now, we will go back on these conferences this winter.

THE COURT: Now, let's go back before the December, '73, what was the last conference before that?

THE WITNESS: Miss Susan Halpern .

THE COURT: She spoke at your -- at the Transit Authority?

THE WITNESS: Yes, but I did not go there.

THE COURT: What was the last conference before that that you attended?

THE WITNESS: I heard Dr. Gabar, professor of psychology at Mount Carmel Hospital.

THE COURT: When did he speak?

THE WITNESS: In May.

THE COURT: '73?

THE WITNESS: Yes.

THE COURT: Do you recall what he said?

THE WITNESS: The Mount Carmel people are consultants in alcohol and they have considerable discussion on T.A. matters there, and the Mount Carmel people --

MISS DUBOIS: I'm sorry, I can't hear, Mr. McLaren.

THE WITNESS: The Mount Carmel people are coming up with an interesting theory about alcoholism to the effect --

THE COURT: Did he say anything about methadone?

THE WITNESS: I don't recall so much about methadone except the whole psychology of drugs and alcohol and that sort of thing.

THE COURT: Will you sum it up? I asked you and Dr. Lanzetta to come over really out of order, which I very much appreciate, but do I sum it up right, that the Transit Authority believes that you have considered the employability of methadone patients, is that right?

THE WITNESS: Yes, after considerable investigation, discussion, conferences, consultations, investigations of our own operation, knowledge of our organization, the risk factor, safety --

THE COURT: If you can tell me, the policy is still not to employ a methadone patient in any capacity in the Transit Authority, is that right?

THE WITNESS: That's right.

THE COURT: Okay, now, can you just sum up why you have that policy so I get your position? I know it is perhaps repetitious, but just to sum it up.

THE WITNESS: Through evaluations of our own organization, its needs, its concerns for public services and safety, the welfare of our employees in this picture, the organization, the structure, the deployment of people, the supervision, the control factor. P.M., afternoon problems, people coming on on the job that come on in the afternoon, the problem of working with clinics, the questionability of the clinics in New York or anywhere else, the information we have received from what we call reliable sources on the recidivism, and how well the clinics have treated people.

The lack of any certification program, the lack of professionalism, the questions raised by the City Council, and politicians in the city, the Federal government itself,

and the questionable practices, the shutting down of clinics, the leaking of methadone through the clinics to the streets, the increase in deaths, the dependency on alcoholism, the use of other drugs -- now take again the evaluation of our own job needs, and what we can do as an operation, what we can do as a management, how well we can control.

The fact that we are not dealing with one person, but we have records to show and do prove that we have either rejected or terminated more than 600 employees -- 600 persons -- we are dealing with a very large problem, that in dealing with the people that represent methadone people, we are not talking about a reasonable group. They are not talking to us about the hypothetical case that you're showing, that people with only 30 days from outside the clinic are a part of this lawsuit, that we feel that we are in something that's over our head, that we cannot handle, and that we know when we have these terrible incidents in the city, where we have loss of passenger services, where we have had accidents, where we have had tunnel fires and things like this, that we stand alone, there is no one supporting us, that it is our responsibility. No one reels to our colors. It is us alone.

We know that our employees are maligned, we know that they suffer, they are discharged, they are terminated for these accidents, and we don't intend, if we can help it,

to risk, have any further risk, in this operation than we have now.

Now, we have compassion. We have shown that in our policies, right down the line, our policies on the employment of minorities is without peer in the United States, especially in the city, our hiring and the promotion of minority groups into the upper echelon --

THE COURT: I won't get into that.

THE WITNESS: This is part of the picture, your Honor. And the compassion is there for minority people, for handicapped people, all of these things are there. Our record on alcoholism, our record on union management relations, every --

THE COURT: Can you just summarize why you think you could distinguish the treatment of the alcohol group one way and the methadone or drug abuse people in another way?

Why do you do that?

THE WITNESS: There are two reasons for it. One of course is society tolerates the alcohol problem, and does not attribute it to being criminal, and that if society knows for instance, that we have problems with drinkers, they don't react with either rage or horror.

The idea of having addicts drive in our system

would, we feel, result in further deterioration of our relationship with the public and undermine our credibility. That's one. Very important to us from our point of view.

And in addition, of trying to get money from the city and from the government and financial support and all the things we need, plus the passenger problem.

THE COURT: Let's get the passenger problem.

THE WITNESS: Yes, number two.

Number two, that we cannot and we do not pretend to believe that the problem of alcohol is an easy one, and there is no question it is a big one, and we are not suggesting that we have the solution. All we are saying to you is that it is a big one and we do not think we can stand another big problem on top of the alcohol problem.

The City of New York, as you pointed out, this is a tolerant city on alcoholism. We do have problems on alcohol.

Now, by tradition, by public policy, and by our own efforts, we have an alcoholic program that's part-way successful, but believe me, there's lots of problems with it, and if you look at the rate that we have, the national rate, they are very close on drugs and they are very close on alcoholism.

THE COURT: What do you mean national rate?

THE WITNESS: I believe that they claim that the rate of alcoholism is about 5 percent of the population and we are running just a little more than 5 percent on drug use.

THE COURT: I don't understand the connection, the national rate on alcohol of 5 percent.

THE WITNESS: Yes.

THE COURT: And then you relate that to what?

THE WITNESS: As we have been hiring these people and the records that we keep, we are running about the same rate of 5 percent on drug use on our applicants, in other words, we are finding it about the same as the national rate on alcohol.

And we are saying to you we cannot handle another problem like alcoholism. It is just beyond our capability. That is our judgment.

THE COURT: Have you in recent times revised at all your policy about past drug users? As I understand it, there is some change in recent months so that you will give individual consideration to people who are now drug-free but had drug abuse histories in the past: is that right?

THE WITNESS: I believe that came from a discussion that I had when I was on the stand before. A hypothetical question was put to me, which was: if a person who was free for ten years, free, not methadone free for ten years, presented himself, had no markings or anything on him, presented himself and said, "I was on drugs ten years ago," what would you do.

And I said in a case like that we would look at that as an individual matter.

I also made the point that I didn't think that would happen and in my opinion, at least, if there was no evidence that he had been on drugs for ten years we would hire him and no one would know about it. He wouldn't tell us. That was the reason for that.

If that should happen and answer is yes, and, as a matter of fact, the reason why we discussed this hypothetical situation was there may be that sort of an applicant in the works and we generalized that question what we

could do with the person who at one time had a history of drug use some years back, would you give consideration to that?

THE COURT: You would not give the consideration for a bus driver's position?

THE WITNESS: No, that is correct.

THE COURT: Let's suppose a past drug user -- I'm not saying ten years back, but let's say some time in the past, two or three years, whatever, who is drug-free now comes and applies. Would you consider him for any position at all?

THE WITNESS: We would not consider himfor any position. We would have to consider him for the positio. he is entitled to.

THE COURT: Please, I meant by "any," meaning some position.

THE WITNESS: Let's go back to the car cleaning. The question there, if that was presented to me, I would do exactly the same thing. I would sit down with my colleagues and we would discuss this development and then we would decide whether or not we would depart from our present policy.

THE COURT: Would you be willing to consider the past drug user on an individual basis or not?

THE WITNESS: I said that it would depend on the title and background, all that sort of thing.

THE COURT: You really haven't worked that through?

THE WITNESS: We haven't. We have on the bus operator.

THE COURT: You differentiate individual consideration from a sort of consideration on a position-by-position basis and you wouldn't consider a past drug user at all for a bus driver?

THE WITNESS: No.

THE COURT: And you haven't worked it out completely about other titles, whether you would consider them or not. You still have to work that through; is that right?

THE WITNESS: Yes, two reasons. One main reason is because as you point out, that would be an individual consideration, the person. We would look at his record more than anything else.

THE COURT: This has been very helpful to me to hear it this afternoon and it still leaves a lot to be done in the case, obviously. I don't know what you still have, Mr. Summers. Obviously Miss DuBois has the right to cross-examine. I'm not through with the case,

but I have to go to New Haven a little earlier than I thought.

MISS DuBOIS: My cross will not take more than five minutes.

THE COURT: Then why don't you do it.

MR. SUMMERS: Can I just pursue a few things more?

THE COURT: I have literally five minutes. Is there anything you can't cover with another witness. I can get him finished this afternoon and he doesn't have to come back.

MR. SUMMERS: I wanted to put into evidence the EPA reports.

MISS DuBOIS: We will work that out. I would like to cross-examine.

Your Honor, we have one other problem. Dr. Doolittle, the Con Edison man, is unavailable all next week. We have a prepared affidavit.

Q When you testified at the examination before trial and when you were deposed you said at that time, with one exception, I believe, that you weren't aware of any accidents or unusual operating occurrences attributable to the use of methadone or other drugs by employees.

A I believe I was asked if I knew of any.

Q You said you weren't aware at that time?

A I said that I was asked if I knew of any.

Q And you said no?

A Yes. I said that I knew of an instance of a bus operator -- accidents, you are right.

Q Since you gave that testimony have you come across any other instances where an accident or an operational occurrence was attributable to the operator having drugs in his system?

A It had been called to my attention that that happened in two case.

MR. SUMMERS: I won't ask Mr. McLaren for this purpose.

THE COURT: You can get that from somebody else. Let's just use Mr. McLaren for the policy.

Q I don't think you indicated, Mr. McLaren, that where you have occasion to refer an employee or maybe an applicant for employment to Dr. Trigg for evaluation, do you accept that evaluation that Dr. Trigg makes?

A Yes.

MR. SUMMERS: All right.

THE COURT: Let's have cross-examination.

CROSS EXAMINATION

BY MISS DuBOIS:

Q Mr. McLaren, in your deposition in this case you told us that Dr. Lanzatta had indicated to you that the persons consulted by the Authority had been Drs. Dole, Gollantz and Trigg and that we asked you whether this was, and I'm quoting from page 152 of the deposition, your Honor -- we asked that if this was an inclusive list of the methadone experts that you have consulted.

"Well, we visited the various clinics and so forth. I can get you a list of that, but I don't have it now."

MISS DuBOIS: The list that was submitted is something we have asked for and have never seen until today.

MR. SUMMERS: Is she making statements or is she asking a question, your Honor?

THE COURT: Please put your question.

Q I want to establish one thing. I want to establish that at the deposition we asked Mr. McLaren whether he recalled any physicians or persons whom he would consider established authorities on methadone and whom he had consulted other than Drs. Trigg, Gollantz and Dole.

MR. SUMMERS: Are you reading the question?

MISS DuBOIS: It is on page 153, Mr. Summers.

It is a specific question.

Q And your answer, sir, was:

"We visited the clinics and so forth. What the names are, I don't know."

A What is your point?

Q I'm asking you whether that was accurate, that those were the only names that you remembered of doctors in the field.

A If the record is there.

Q With respect to your Civil Service System, do you have a probationary period for employees?

A Yes.

Q How long is that period?

A Six months.

Q Can you through your disciplinary procedures after the probationary period is completed have the power in some cases to suspend an employee without pay?

A We have the power to suspend, yes.

Q Mr. McLaren, you testified on direct examination that you had been at the Vera Institute of Justice about the difficulty of methadone maintenance persons working at night?

A Yes.

Q Do you recall a conversation you had with Mr.

Kenneth Marion, Director of Vera Institute's Wildcat Association in which he wished to screen former addicts to perform work for the Transit Authority?

A Yes.

Q Do you recall telling Mr. Marion that you would not accept his offer because if Wildcat's former addicts performed well on the job the Transit Authority would have to hire them and the Transit Authority would not want to do that?

A No.

Q What do you recall?

A I recall a conversation where we had -- priests, by the way, were sponsoring these people. They offered to psychologically screen a group of people and would bring them in and work on our platforms, not at night. We would not permit them to work at night. We did not feel -- we felt that they had problems at night but they must do it on days, and we pointed out to them by working on days they worked during our most congested hours and that it wasn't feasible to work people in days.

Q When you state that, was this your conversation with Mr. Marion that you were referring to?

A I didn't have a conversation. There were at least 10 or 12 people there.

Q Was Mr. Marion present?

A A representative of [illegible].

Q Is that the only reason you gave against the Transit Authority taking --

A We gave this , this situation. We said that our employees on the stations would not look with favor upon addicts coming into our property when they are being beaten, shot, assaulted by addicts and the police are being killed and beaten and shot, and that we have 800 robberies so far this year involving almost over $[illegible] 000, and that the employees down there were in no frame of mind to cooperate with any program bringing addicts on to our platform. That is what I said.

Q And did you not tell Mr. Marion that you were afraid that his employees might perform well?

A I was afraid they would perform well?

Q Yes.

A He said they couldn't perform at all when we wanted them to perform. That was at night.

Q You didn't tell him that statement?

A No.

MISS DuBOIS: That is all.

* * *

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

CARL A. BEAZER, et al.,

Plaintiffs : 72 Civ. 5307

v.

NEW YORK CITY TRANSIT AUTHORITY

Defendant

- x

December 12, 1974,
10:10 A.M.

Before:

Hon. Thomas P. Griesa,
District Judge.

Appearances:

ERIC D. BALBER, ESQ.,
MARK C. MORRILL, ESQ.,
ELIZABETH B. DuBOIS, ESQ.,
Attorneys for Plaintiffs.

EDWARD W. SUMMERS, ESQ.,
GILBERT T. DUNN, ESQ.,
Attorneys for New York City Transit Authority.

Present: Lucius Smejda, Law Clerk for NYCTA

* * *

W I L B U R B. M c L A R E N, resumed.

DIRECT EXAMINATION

BY MR. SUMMERS:

Q Mr. McLaren, would you look at Defendant's Exhibit GG-1 marked for identification and tell us what that chart purports to show with respect to the New York City Transit System?

THE COURT: This is Exhibit GG-1?

MR. SUMMERS: GG-1 marked for identification, your Honor.

THE COURT: All right.

A I was asked to give an explanation of our functional organization, and in order to do this we first

must understand the use of our facilities.

Now, you will subsequently see we carry approximately two billion people a year and six million a day from Monday through Friday, but the ridership is distributed in this manner (indicating), and it has a great deal to do with our work assignments and how we run our operation.

THE COURT: How many people do you carry a year?

THE WITNESS: Approximately two billion. We will have exact figures later on.

THE COURT: And how many per day?

THE WITNESS: Six million. Monday through Friday, the work days.

THE COURT: All right.

A Now, if you will note, during the evening hours from 7 through until 6 in the morning the traffic falls off greatly. Then it spurts up, and if you will note here 3.9 per cent, 11.2, 12. and 6., so that between 6 and 10 we carry an appreciable percentage in the day. It's much similar to what we carry in the afternoon hours from 3 through 7.

Now, in the organization, in our organization of the work force we then have to provide workers as well as the equipment during those hours. Very few of our people work what is called a regular shift of 7 to 3 or 8 to 4 or

9 to 5. Our people work off-shifts.

For instance, in order to man up for the morning hour operators, the maintenance people and so forth are coming in early morning, 2, 3, 4, 5 in the morning.

THE COURT: Who would come in at 2, 3, 4 and 5 in the morning? Who comes in, say, at 2 in the morning?

THE WITNESS: Our operators, and so forth. We build up in order to be fully manned for 6 o'clock, 7 o'clock in the morning when our peak load starts to come in. All of our facilities are required to man up those that are involved in the transportation of people.

The same thing is true in the afternoon. We have another peak load. Therefore we start manning up during the noon to 2 o'clock, 3 o'clock hours.

A man coming in at 3, of course, will not be fully on the road, and so forth, for some time after that.

Now, what I am demonstrating is that we are not working with a situation that is normal in the sense of the working hours that most people have in this building, or any other government building, or in factories throughout the United States where they start at a specific time like 8 o'clock in the morning and go home at 4 o'clock in the afternoon.

Now later on we will begin to see more of this,

but basically we are working them with two peak loads that are off hours as far as family relationships, as far as living conditions.

BY MR. SUMMERS:

Q Have you completed the explanation of that chart?

A Yes.

MR. SUMMERS: Your Honor, may I offer that chart in evidence as a digest, a summary of the witness' testimony?

THE COURT: Is there any objection?

MS. DuBOIS: No, your Honor.

THE COURT: All right, received.

xx (Defendant's Exhibit GG-1 received in evidence.)

THE WITNESS: Now in order further to understand something about our system --

MR. SUMMERS: Before you go on, may we indicate for the record that the witness is now looking at Defendant's Exhibit marked for identification GG-2.

THE COURT: All right.

THE WITNESS: Going further into background information about our system we have a section called System Highlights, and the first part refers to the start of our system, the BMT began operations in 1878, the first subway was in 1904 and the IRT, the oldest tunnel still used in 1904, and the first Brooklyn IRT was in 1908,

and the Independent Subway began operations in 1932, and unification of the IRT and BMT was in 1940, and the buses were pretty well unified by '47 and '48.

Now I call your attention to this information because essentially we are using many of the same structures that were built in 1904, including stations, tunnels, the lines where they are laid out, the railroad booths, and so forth.

Now, this does not mean because it's old it's unreliable. Old equipment old buildings, old structures are, if handled properly and carefully, are still good. But they must be handled with respect, and in light of their age.

Secondly I spoke earlier about our passenger information. Here it is broken down by Rapid Transit and Surface. As you note here it's--

THE COURT: Your figures about passenger s and work force, that is all current; is that right?

THE WITNESS: Yes, sir.

THE COURT: When was this chart prepared?

THE WITNESS: Just recently.

THE COURT: All right.

THE WITNESS: And as you may note here we have approximately 50,000 people in our work force, then they

are broken down into these categories. I believe you asked for this information. We have hourly operating, 15,614 in the Rapid Transit, and Surface 10,158, in the hourly maintenance 8,720, in Surface--

THE COURT: What do you mean "hourly operating"?

THE WITNESS: They are the men that operate the buses and trains, take the fare, things of this nature. They are involved with the operation of the equipment.

THE COURT: You have got under Work Force, you have got the category of hourly operating and you have got a category, annual operations. What is the difference?

THE WITNESS: The annual are the supervisors, or people in supervisors' category that are assigned to such responsibilities as schedules, developing of schedules.

BY MR. SUMMERS:

Q Does the annual refer to the fact they are on an annual pay basis instead of an hourly basis? Is that the--

A Yes. There's a distinct difference that most, or all of their titles, or most of them are supervisory, but in the railroad tradition they perform many staff functions like development of the schedules, the budgets, the methods in engineering area and things of this nature.

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THE COURT: Have you got any little Xeroxes of that?

MR. SUMMERS: Yes, your Honor. I'm sorry I didn't

make them available to you. Ms. DuBois has one there.

THE WITNESS: I thought you had one. I'm sorry.

THE COURT: All right.

MR. SUMMERS: Do you want to follow this now (handing)?

THE COURT: Thank you.

THE WITNESS: Yes, I am sorry.

THE COURT: That's all right.

THE WITNESS: We are talking about payroll here on hourly, they are paid by the hour, the operating and maintenance people are, and the annual operations are paid annually.

THE COURT: All right.

THE WITNESS: The professional, as we point out, engineering, and the professional legal, accounting and medical, and then the career and salary, these are other than professional employees in that category. And our police force.

BY MR. SUMMERS:

Q You have some percentage figures down at the bottom of the chart. Would you please explain the significance of those figures?

A Yes. As we pointed out on our use of our facilities, the percentage of hourly employees working at

least part of the duty toward night, Saturdays and Sundays, are 76 per cent.

Now, this means that either the people may work all night shift, they may start at night or finish in the night and work Saturdays and Sundays. This again illustrates the odd shift requirements that we have here in order to give the service to the City of New York.

In addition it also points out that most of our employees do not work what is called a regular family shift. They are starting early or finishing late. They also must work Saturdays and Sundays. The next figure --

THE COURT: What do you mean "per cent of hourly employees requiring replacement"?

THE WITNESS: It means that if I am not there in the morning to take out a bus, the bus stands idle, or someone has to replace me immediately. The same thing is true of a signal maintainer, he patrols the --

THE COURT: I get you. All right.

THE WITNESS: The bottom line is especially significant, as we point out --

MS. DuBOIS: Your Honor, I object first to "the bottom line." I object certainly to its admission in this form. I don't know whether the witness has anything in the way of direct testimony to support that.

THE COURT: : Well, I guess you will elaborate or give the details on that. Why don't you do that? What do you mean by that?

THE WITNESS: What I mean by that is that, we'll take an example of a bus operator. The bus operator may travel from A point to B point as much as 20 to 25 miles and no supervisor observes him. There is no one standing over his shoulder watching what he is doing. The communication we have with him is radio, from his bus to the control center. No other observation.

We do have at periodic intervals, especially where there are problems in loading and unloading, we may have a dispatcher to help the passengers in and out, and also to observe the driver at that point. We also may have dispatchers riding in cars that will have a large area.

But, for the most part he is not under observation of a supervisor. This goes for a large percentage of our people in the Authority. That's all I have.

MS. DuBOIS: Your Honor, I still object to this description of large percentage. I would like to know exactly what titles and what Mr. McLaren is talking about.

MR. SUMMERS: Well, would Ms. DuBois defer until her opportunity for cross-examination comes? Unless she has some objection to the testimony itself.

THE COURT: I will overrule the objection.

MR. SUMMERS: Might I offer Defendant's Exhibit GG-2 marked for identification into evidence?

THE COURT: Do you have any objection other than that bottom line, Ms. DuBois?

MS. DuBOIS: No, your Honor.

THE COURT: All right. That objection is overruled and Defendant's Exhibit GG-2 is received in evidence.

(Defendant's Exhibit GG-2 received in evidence.)

THE WITNESS: Continuing with the system highlights--

MR. SUMMERS: Would the record note that the witness is looking at Defendant's Exhibit GG-3 marked for identification.

THE COURT: All right.

THE WITNESS: The first session refers to the energy, or fuel that we use. The power generating sub-stations are 177, and the kilowatt hours are two billion three hundred million. The rails and the replacement of ties per year is significant as the electrical power is tied into a third rail that parallels our rail system.

The gallons of diesel oil consumed are thirty million. Now, both of our sources of energy are dangerous and require careful and expert handling. The consequence of not doing that, of course, is burns in both instances.

Now, in the next section we have given you some background in regards to the unfortunate incidents that we do have. Although we run the safest system in the world we have accidents. The cases during the year '73-'74, there were 207 people, persons hit by trains, dead on arrival at the hospital 92, and in surface, 11.

Passenger accidents you will note 6,152 in Rapid Transit, and 2527 in Surface.

THE COURT: Just hold it a second. Let me get with you. When you say '73-'74 is this a two-year period or is it a kind of a fiscal year, or what?

THE WITNESS: It's a one year period. A one year period.

THE COURT: Running from when to when?

THE WITNESS: Calendar year, I believe.

THE COURT: Well, if it is calendar year it is two years, '73-'74.

THE WITNESS: No, I am mistaken, it is fiscal. '73-'74.

THE COURT: What is your fiscal year?

THE WITNESS: It's July 1st, June 30th.

THE COURT: So you are talking about the fiscal year July 1, 1973, to June 30, 1974?

THE WITNESS: Yes. Yes, it's the latest figure

of '74.

THE COURT: Am I right?

THE WITNESS: Yes.

THE COURT: All right.

MS. DuBOIS: Your Honor, since Mr. McLaren indicated confusion about the year I would like to know the basis of his knowledge about these statistics.

THE COURT: Well, the statistics are gathered for the National Safety Council reports, reports to the government that are required. It is a standardized report. It is not individual or similar to the Transit Authority.

MS. DuBOIS: Your Honor, we asked on discovery for all reports relating to safety and accidents, and --

MR. SUMMERS: Now, your Honor, I --

MS. DuBOIS: And the defendants--

MR. SUMMERS: Hold it. Hold it. I have an objection-- I have an objection to Ms. DuBois interrupting the witness unless she wants to make an objection to his testimony. Otherwise she should wait her turn to cross-examine.

MS. DuBOIS: I should have preceded that by saying, objection, to this testimony.

THE COURT: All right, you are objecting to what phase of this?

MS. DuBOIS: I am objecting to the introduction

now of extensive evidence about fatalities in accidents when we asked on discovery, in the very beginning of discovery, about safety reports, accident reports, and were given nothing, we were told only very late in the case, indeed after the trial began, that there were only two accidents that had alleged any relevance at all to this case, and those it turned out while they seemed to involve--

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MR. SUMMERS: That is a lot of nonsense, your Honor.

THE COURT: Wait a minute, Mr. Summers, please. There is no reason for any of this.

Ms. DuBois, all I can say, I am repeating what I said earlier, really at this juncture I cannot take time to review all of the history of the procedures. It could be that on some theory this should be precluded because you asked for all of these kind of things and they only gave you a few things and this is in addition. It could be argued that this is something different from what you asked. I just cannot trace it. I am just going to say, just to provide a ground rule which you understand, and I can sympathize with your objections, but I am at this point because of the particular needs I feel in the case, I am not going to preclude any party from offering any evidence because of any argumentabout failure of discovery, anything like that.

I am going to receive any relevant evidence now on the grounds of relevance regardless of prior discovery proceedings. If you want to impeach the evidence, you use discovery for impeachment purposes, that is something else.

MS. DuBOIS: I understand you have no exception, but what I am indicating is because of their failure to respond to request number 80 plaintiffs are put in the position of being unable adequately to bring to the court's attention the relevance or significance of any of these alleged facts, assuming those facts are true. Because we have not been given the underlying documentation.

So that I think at the least if the court is going to accept the evidence it should accept it with a certain skepticism as to its relevance since we having been denied the reports we asked for have no way of adequately cross-examining the witness as to the significance of, for example, passenger fatalities hit by train, what other categories are there? We don't know. What categories are there for employee fatalities?

THE COURT: Frankly I think these are general basic statistics which I would expect the Transit Authority to have. They are obviously shown to indicate the general degree of danger here. They are not shown to be related

to heroin. They are general statistics which the Transit Authority obviously has, and it is obviously of some significance.

MS. DuBOIS: Your Honor, it is the court that denied us, not just defendants, but the court that denied the plaintiffs those studies, memoranda and documents relating to accidents. We asked for that and we did have a conference with the court on that because the Transit Authority refused to give it to us, and the court ruled we were not entitled to it. So I just suggest that it is somewhat questionable to now the Transit Authority comes in with this and indicates it sufficiently --

THE COURT: Ms. DuBois, I could spend a lot of time going over that saying what I ruled, why I ruled. Let's assume I made a mistake and I didn't see the issues. I'm sorry. I just have to take it the way we are now. Now I don't think these present a tremendous complication to anybody in cross-examining. Let's go. If you need time to rebut, cross-examine, I am just going to say this, I will receive any relevant evidence now, regardless of prior discovery proceedings which I do not want to take time to trace.

Secondly, I will permit anybody a reasonable opportunity to prepare if they are surprised by evidence,

to prepare for cross-examination or rebuttal, and that is going to be the ground rule.

I don't understand one thing there, and that is you have got "hit by train 207, DOA 92 and 17." What does all that mean?

THE WITNESS: It means that in this period of time there were 207 persons by trains and 92 were dead on arrival at the hospital and 11 were --

THE COURT: So in other words, the actual fatalities are the 92 for Rapid Transit and 17 for Surface?

THE WITNESS: Yes, sir.

THE COURT: Not the 207 hit by trains?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: Technically speaking, without getting into a lot of detail.

THE COURT: All right.

THE WITNESS: Now, so I can recapitulate what I have shown is an attempt to --

THE COURT: Well now, how do people get hit by a train? Is it something that an intoxicated man falls off a platform, or --

THE WITNESS: Suicides, intoxication, addicts. Some people are thrown. We have had instances of that. And

peopel sent to prison for doing that. Means of eliminating people.

THE COURT: Murder.

THE WITNESS: Murder. And some is murder and suicide. Mothers have thrown children and then they have jumped afterward.

THE COURT: Well, now, what can an employee-- just speaking in general terms, because I am sure these things do follow a pattern -- what does an employee of the subway do, what can he do about it?

THE WITNESS: What can he do? When it happens, of course, the train has to go into emergency and the crew, both the conductor, the motorman, the porter, the railroad clerk and the police available take over and try to extricate the person. Many times the passengers will join pulling and pushing the train and try to get the man out. There is a technique to do this. And all the group involved, maintenance people and so forth, mobilize to extricate the passenger.

THE COURT: In other words, if somebody falls off the platform then --

THE WITNESS: The whole system goes down, of course.

THE COURT: If the train isn't actually moving in at that moment there would be-- well, I always have

wondered, what happens, I am waiting at a subway station and a train isn't coming in, I am in a crowded subway station, somebody falls off the platform. Now, is there a standard operating procedure when that happens?

THE WITNESS: Yes. Yes. They would of course immediately get in touch with the tower and try to get in touch with the train by radio and to slow him down.

THE COURT: Who does that?

THE WITNESS: The railroad clerk, or we have platform conductors on some of our more crowded stations, or police if they are there.

Now, we do have kids who play chicken. You may recall here recently --

THE COURT: Let's not get into that.

THE WITNESS: No, but they are on the track. It's a good example, exactly what you are talking about.

THE COURT: But in other words, somehow the railroad clerk, or somebody would getword presumably and call the tower and try to get trains stopped.

THE WITNESS: Right.

THE COURT: Now then, what would be the procedure for getting that person out of the --

THE WITNESS: Well, it's usually just acts of heroism. We have those right along where people will go

under the train and risk their own life and do it. We have had magnificent examples by both employees and private citizens. It depends, of course, the train is. The power is another factor. As soon as anyone is on the track, a dog or a man or anyone, we immediately will have to shut off because it will short circuit the tracks. Objects thrown on the track will short circuit the track. We have problems about that, of course, other than just the vandalism.

THE COURT: Who has control to turn off the power?

THE WITNESS: The control room that you visited at Jay Street.

THE COURT: The tower room?

THE WITNESS: Yes, sir.

THE COURT: All right, go ahead.

THE WITNESS: In developing this explanation of our organization we move next into the physical number of vehicles that are involved. The subway cars and buses, subway cars we have 6,700, passenger, and 476 work vehicles, and in buses we have 4580 buses and 102 work vehicles.

The road mileage in the Rapid Transit, the open cut, or surface is 186, the elevated, 448, the underground 710, the the surface we have 1331 miles of routes that we

travel in the five boroughs.

The number of routes in the Rapid Transit is 31, and in surface is 200, and on train or bus trips are 7,265 train trips and 75,940 bus trips. On an average weekday.

River crossings, bridges is 9 and 22. Now again, as we pointed out, this is an enormous complex operation in the sense of scheduling, getting people there on time, moving the equipment, and integrating operations so that it can service the public.

MR. SUMMERS: Your Honor, I offer Defendant's Exhibit GG-3 marked for identification.

THE COURT: Is there any objection?

MS. DuBOIS: I object on the same basis, your Honor, as ruled on.

THE COURT: All right. Overruled. It will be received.

(Defendant's Exhibit GG-3 received in evidence.)

MR. SUMMERS: Would the record now indicate the witness is now looking at Defendant's Exhibit GG-4 marked for identification.

THE WITNESS: Giving you further background about the physical aspects of the property, to relate to the functional organization we have here station or bus stops. Here on stations in the Rapid Transit we have open cut, or

surface, 38, elevated 160, underground 265 for a total of 463.

In the surface division we have 15,000 stops, which is one of the most difficult things we do because it is the stops in the bus operation that provide the danger in passenger accidents.

THE COURT: What is an open cut, or surface?

THE WITNESS: Well, if you have traveled on the subway you know some of our lines underneath the ground and others are on structures where they go above the streets on iron, steel, even wooden structures and some where the ground is cut out and they go in sort of like a valley, that's called an open cut.

THE COURT: I get it. All right.

THE WITNESS: On the station booths we run 591 on a 24-hour operation, 221 on a part time in peak hours. Total of 812. And so far this year we have 1,049 booth robberies, and the amount of money is roughly around $500,000 that has been stolen in these robberies.

THE COURT: Why did you cut it off the chart?

THE WITNESS: You mean the number or the amount of money?

THE COURT: The amount of money.

THE WITNESS: Well, you know there is always a

helpful person at the last minute, and he looked at the figure and he said, I think there is more money involved than what we have here. So he went back and checked, and it was not so.

THE COURT: So it is about a half million dollars?

THE WITNESS: About a half million dollars is accurate.

Now, in order to service the vehicles, storage and things of this nature, we have 18 Rapid Transit yards surface and 25 shops in Rapid Transit and 2 surface.

Now then this gives an idea of the spread of our operation with the 700-odd miles of rails and the 13, 14 hundred miles of routes for our buses. We have to disperse our operation throughout the five boroughs in order to service, as we have with our stations and our bus stops and our collection areas.

Now, next we get into the area of controls and there we show that we have 185 control towers, 153 are manned and 32 are remote control. In signals we have 6,549.

MR. SUMMERS: No, that is the telephones. The signals are the 10,000.

THE WITNESS: 10,481. And the telephones are 6,549. You probably can read the chart better than I can.

THE COURT: You don't have to read the chart.

THE WITNESS: Right. I think it stands on its own. The significance, of course, is that communications, because of our spread and lack of supervision is in the enormous network of telephone signals, radios, etc., and lights, by the way.

THE COURT: What about signals, are you talking about the signals on tracks?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: That control the operations.

THE COURT: All right.

THE WITNESS: As a matter of fact, in a study, just a side comment, a motorman in an average run will encounter around 800 signals.

THE COURT: All right. Do you offer this?

MR. SUMMERS: Yes, I offer Defendant's Exhibit GG-4 marked for identification.

THE COURT: Is there any objection?

MS. DuBOIS: No, your Honor.

THE COURT: All right, received.

(Defendant's Exhibit GG-4 received in evidence.)

MR. SUMMERS: Would the record again show that the witness is now looking at Defendant's Exhibit GG-5 marked for identification.

THE COURT: All right.

THE WITNESS: The next chart is an explanation of our functional organization. How do we take the schedule that we have and the equipment that dates back to 1904, our vehicles in the Rapid Transit division and our power and all of the other elements that we have looked at, and functionally relate them to each other? I think that is what you asked us to do.

Now we start with power, over two billion kilowatts a year, and we take it into our power department where in our sub-stations we convert it to energy, and we distribute it into the maintenance of way department. If you note up there we have a power distribution extension and there it is fed into the third rail. And the third rail parallels this 700 miles of rail throughout the four boroughs. And that is the energy for the system.

Of course that directly relates and is tied into all our other departments, stations, Rapid Transit and car maintenance where the power is used to move the 6,700 operating vehicles and four or five hundred work vehicles.

Now in the maintenance of way we have our maintainers, in the function of maintaining the track area plus the various structures. Let me explain. We must maintain these 10,000 signals throughout the system. This is done

by constant controlling not only preventive means but by whenever there's any problems where people have to be sent out. The track is as we explained it, this is the 700 miles of track that must be replaced periodically and must be replaced whenever one of the track spotters recognizes an area that needs repair.

They also check, of course, switches. Equipment covers just literally dozens of items such as the communications equipment, the elevators, the escalators, the various compressors, fire equipment and so forth throughout the whole system.

Then lighting. The lighting fixtures that are in the tunnels as well as on the station areas, or in the offices, they are everywhere. The 300,000 of them as we have noted, and it is a job where the people are required to go all over the system.

The power distribution I have explained. And on the structures, now here we have two types of structures. We have the buildings that we talked about, shops. These are normal maintenance type of operations that you are familiar with in this building. If you want the roof repaired or the electrical fixtures repaired, plumbing, and so forth.

It also covers the structures on the line, the

structures that carry the track, the overhead structures. The stations, the various structures that concern the track. Maybe the overhead structures that have sheet metal. Things of this nature.

Now, this department then all the people in this department are required to move throughout the system, both Rapid Transit and bus, and they relate to all of the departments.

Next we move to the Rapid Transit division. If you will note each one of them has the number of employees. There one of the main functions is control of the trains, and they do that through the command center and the towers. The towers on the track, command center ties it all together through our telephones and radio and communications. They are also required to establish the schedules, that is from where the trains will run from A point to B point, the station stops, the amount, the amount of headway between the trains. The weekend schedules, the evening schedules, the rush hour schedules.

Of course this determines how many trains run and how many go into a yard. The platforms. They are responsible for the platform itself. When you were talking about what happens on an emergency condition, on the very crowded platforms we have a conductor. On road operations

this is the train itself, running of the trains.

THE COURT: Are the buses--

THE WITNESS: This would be another section, sir. That will be the next page.

THE COURT: I see. So this is only the--

THE WITNESS: Rapid Transit. Rapid Transit.

THE COURT: All right.

THE WITNESS: Now, on the yards they have two functions. First as storage, weekend storage, off hour storage. The trains are not kept running constantly because of the fuel cost, engine cost, and so forth. They are removed and stored and have to be brought out as the men come on for the rush hour, the two peak hours.

They also service the operation. First of all, they service the car maintenance division by delivering to the car maintenance area the car for preventive maintenance, mileage checks, rebuilding, repainting, refurbishing, things of this nature.

They also pull the work trains for the maintenance of way department. The men are transported throughout the system on work trains, special equipment, and so forth. They run the work trains. This is a part of the scheduling operation.

We move now to the station department which is part of the transportation system. The differences you may have noted before between maintenance and operations. These two departments are the transportation department.

There we find the station department employees have the fares, the collection of the fares, they have the housekeeping on the platforms and they have passenger information. To help them on passenger information we have a passenger phone center. The public an call directly to the passenger information center and they can also call our stations too.

I will get back later to communications, but, of course, there is this intricate network of communications through here. In addition, the TA police largely

services the transportation department. They service the trains by riding them in the danger hours, and, of course, they service the platforms by keeping order on the platform.

THE COURT: The TA police would be the figure you had back on Sheet 2, 3600?

THE WITNESS: Yes, 3600. They also have the responsibility of trying to get this robbery situation under control and are involved in this very traumatic experience of a person under a train.

We again now move into another maintenance department, the car maintenance department, that services the equipment, not the structures and not the track, but just the equipment, the 6700 passenger cars, and I believe it is around 400 work vehicles.

There they have the main function first of road inspection. These are people that are out on the road and do inspections out in the operating areas. This is preventive inspection and, more important, they are there for breakdown purposes and do repairs out on the track during the operating hours in order to move a train that is either out of order or in order and it can be done by minor repairs, repairs that can be done out there.

Then we have the yard inspection and we have the

shops. The shops are where we work with the component parts, rebuilding, reassembly, and the installation.

Then the fourth function is cleaning. If you will note, we have over here communications. This is the main system other than voice throughout our system. Telephone, I think we gave you the number of those, signals, those are on the track. Telephone, by the way, is the main communication of the station department.

THE COURT: You don't have any number of employees over there, so I take it that is just --

THE WITNESS: The departments, each department has a number of employees.

THE COURT: But as far as communications, there is no separate category of employees for communications, right?

THE WITNESS: No, no. Other than the fact that we have telephone repairmen.

THE COURT: Your employees are included in these figures that you set up?

THE WITNESS: Yes. So our main lines of communication are telephone signal, radio and tower.

The command center in this whole system is coordinated and tied into, of course, the executive officer for operation of the maintenance, and as we have noted the

passenger safety, the TA safety, and, in addition, we have out hot lines to the New York City Fire Department, POlice Department and to hospitals and to the Mayor's office.

THE COURT: You have these power employees, 1056?

THE WITNESS: Yes. These are the substation. I think there are 117 --

THE COURT: What do the power employees do?

THE WITNESS: They man the station, the sub-stations, and they have converters in ther that convert this power in kilowatt hours to what we use, energy.

THE COURT: There are separate electrical stations?

THE WITNESS: Yes, 117.

THE COURT: We didn't see any of those.

THE WITNESS: Probably not. They are scattered around through the system.

THE COURT: What do they have in them?

THE WITNESS: Power electricians.

THE COURT: What kind of equipment, generators?

THE WITNESS: Yes, and converters. They convert and slow this current down to the 600 watts that we use throughout the system.

THE COURT: You don't have your own generators?

THE WITNESS: No, we have converters.

In addition, they are in charge of the distribution system to the third rail, the cable system, and this is both in the street and in the tunnels and throughout the system.

THE COURT: We already have the figure for the number of power stations.

THE WITNESS: I believe I had it in there. I think it was 117 plus some few others. I forget.

THE COURT: I don't recall it.

MR. SUMMERS: 177, that is No. 3.

THE WITNESS: There are 1056 employees there.

MISS DuBOIS: Your Honor, before this is received in evidence, may I ask what this is or could I look at it?

THE WITNESS: These are the equipment that we have in the subway. You remember I was talking about the large amount of equipment that we had to maintain. It really is a note. You may have it, if you wish. It is a note to refresh my memory if we needed it. Escalators, elevators, compressors, pumps, fire --

THE COURT: Why don't we just introduce that as part of it.

GG-5, are you offering that?

MR. SUMMERS: Yes, your Honor. GG-5 is offered in evidence.

THE COURT: We will include that list attached to Exhibit GG-5.

(Defendant's Exhibit GG-5 was received in evidnece.)

BY MR. SUMMERS:

Q Will you address yourself to Defendant's GG-6 for identification.

THE COURT: Let's take our morning recess.

(Recess.)

Q I believe we are finished with that chart, aren't we?

A Just one point on the power department.

In addition to the converters of the 25,000-volt to 600, we also rectify from AC to DC and then transfer.

THE COURT: What's the 25,000 volts?

THE WITNESS: That's the way it is delivered to us from the Edison Company.

THE COURT: Converted to 600?

THE WITNESS: Yesd.

THE COURT: That's the third rail?

THE WITNESS: That's the third rail.

That's the power throughout the system.

MR. SUMMER: Would the record note that the witness is now looking at Defendant's Exhibit GG-6 for identification.

THE COURT: This, I take it, is a comparable chart for the bus system; is that right?

THE WITNESS: Yes. If you notice here, Surface maintenance operation, there again they run the depots and they have the job of storage on the off hours in comparison to what we had in the Rapid Transit, and the cleaning. They also do the fuel and service, and this is the water, tires, lube and oil.

THE COURT: You are talking about Surface maintenance?

THE WINESS: Yes. The Surface maintenance operation is spread throughout our system in the 20 or 19 depots, I think it is, and there they have the responsibility of storage on the off hours, weekend, and so forth. Then they do the cleaning in the depots of the vehicles.

THE COURT: I think your category, just to save you time, I think the categories are pretty clear. Then you have what you call the transportation category, you have 10,647, right?

THE WITNESS: Right.

THE WITNESS: Right.

THE COURT: You say fares, what's done as far as fares?

THE WITNESS: The operators have the responsibility to see that the passenger pays the fare. The fares are exact fare. There is no transaction --

THE COURT: There are no separate employees?

THE WITNESS: No. The operator is responsible for that.

THE COURT: Going back to chart -- let me take Charts 5 and 6.

In the employees listed there, are there any clerical employees?

THE WITNESS: No, these are all operating. Annuals are there.

THE COURT: 5 and 6.

THE WITNESS: No clerical.

THE COURT: Can you think of any other types of employees that would not be included in 5 and 6?

THE WITNESS: Yes. For the large part most of our staff or clerical and professional are not in the operating areas.

THE COURT: What you are saying is that 5 and 6 include what you call the operating personnel?

THE WITNESS: These, right. Each of these have a clerical force and a supporting force, but are not in here.

THE COURT: Let's see. I guess we go back to Chart 2.

THE WITNESS: I explained, I believe, that when we looked at the transit industry, in the transit industry many of the so-called professional or clerical duties are performed by hourly or annual operating people because of the complexity.

For instance, the schedules, the methods, the budgets, the order of the material, things of this nature. We do have clerical employees and I can get that information for you in each of the departments and on the case of maintenance of way we actually have engineers that are assigned to the maintenance of way department that do the engineering on tracks, and things of this nature.

This is the maintenance function, not the construction function. These 1000 people in engineering here are --

THE COURT: We are looking at Chart 2 now; is that right?

THE WITNESS: Yes. These 1000 people, professional engineers, are distributed between the construction

function and the maintenance, but the largest percentage, probably 900, or so, are in the construction area. The rest are in the maintenance area.

THE COURT: On Chart 2, let's take the 15,600 hourly operating personnel for the Rapid Transit. Does correlate with either 5 or 6? Maybe one of lawyers knows.

THE WITNESS: I don't know. What this correlates with is the departmental quotas. I am not sure whether it is just the hourly or the entire department quoted. I'd have to ask the person who made up the chart.

THE COURT: What do you mean, quota? I thought these were actual employees as of more or less the present time.

THE WITNESS: Yes. We use the term quota in the Transit Authority as meaning the number of people assigned to a department.

THE COURT: Is there any substantial difference between the actual employees now and the quotas?

THE WITNESS: No, very little at any time.

THE COURT: That figure that I mentioned before, 15,600, Chart 2, Rapid Transit hourly operating, does that include any clerical employees?

THE WITNESS: The clerical are down here for the whole Authority, the 2400.

THE COURT: You are telling me that the 15,600 does not include clerical?

THE WITNESS: No.

THE COURT: They are what you call the operating --

THE WITNESS: Operating, right, they operate.

THE COURT: The clerical would be found under the heading career and salary other than professional, 20,020 for the Rapid Transit, 424 for Surface?

THE WITNESS: That's right.

THE COURT: Is that all the clerical employees you have got?

THE WITNESS: Yes.

THE COURT: I guess that would be something -- I mean, it wouldn't be just clerical.

What kind of categories have you got in career and salary other than professional?

THE WITNESS: They are the people that support the professional, the legal, the accounting, the medical is an example of professional. But the people that work in the personnel department, they are clerks, stenographers, secretaries, supervising groups of that nature. They are

grouped traditionally under Civil Service and fall in the category of career and salary.

THE COURT: In other words, there would be what I might call clerical people that handle mail and filing and that kind of thing?

THE WITNESS: Yes, and support the professional people.

THE COURT: Then there would be stenographers?

THE WITNESS: Right.

THE COURT: Then there would be higher level people, I think you mentioned, like personnel people; is that right?

THE WITNESS: Yes.

THE COURT: Interviewing?

THE WITNESS: Right. The interviewers could be in the career and salary. For instance, a personnel examiner requires a college degree and certain requirements could be up. It is a division that is decided by our citywide titles or your Civil Service that's based upon the educational requirements and experience requirements, and things of this nature.

THE COURT: Are you at some point going to come to a more specific description of jobs than you have given me? If you are, I am not going to labor it. I would

be interested in knowing what you have in terms of -- I'd be interested to know what the breakdown of this 2400 people that you have listed in career and salary -- are you going to come to that? I mean, is this going to come later?

THE WITNESS: It can. I have with me our personnel director, and I think he could give You a more detailed explanation of this than I can.

THE COURT: I don't think Chart 6 was offered. Are you going to offer 6?

MR. SUMMERS: Yes, GG-6 is offered in evidence.

THE COURT: Any objection?

MISS DuBOIS: No.

THE COURT: Received.

(Defendant's Exhibit GG-6 was received in evidence.)

BY MR. SUMMERS:

Q Would you turn to GG-7, Mr. McLaren, and tell us what that chart purports to show?

A Here we are getting into a section where we are going to analyze each of our departments, again getting back to the functional chart and the departments listere thereon, and give us some background of the hazard within the organization.

There has been some discussion about the various hazards in various industries, and so forth. The National Safety Council keeps a record of 42 industries and the Transit industry reports the second highest accident frequency rate and the 14th highest accident severity rate, and this is the basis for figuring the frequency and severity rate.

MISS DuBOIS: Your Honor, I object to that on the grounds that it is hearsay.

THE COURT: Overruled.

THE WITNESS: One of the points that we have discussed previously is the number of incidents we have had in robberies, and so forth, and it's reached the point here in the Transit Authority that we have had to arrive at an agreement with our unions in order to alleviate the condition.

As you noted here, we had about 500 full-time booths and we have had over 1000 robberies, and some of our clerks have had as many as three or four robberies. They are being shot at, they are being beaten, things of this nature, and the traumatic effect, the psychological effect is such that we are now -- the doctors are prescribing time off. The same thing is true with the motormen --

THE COURT: I tell you, I am not really clear on this exhibit. I am clear down to where it says not included in TA accident frequency and severity rates for 1973 and 1974 because lost time contracted by union agreement are the following.

What do you mean there?

THE WITNESS: Let me explain it this way. In the reporting of incidents or accident, where an item is controlled by a union agreement, it is not reported as an accident. In this area we are so unique and different than the rest of the transit industry that our medical department as well as ourselves, with the union, have agreed that in the case of booth robberies, that when they encounter this, the employees are given time off, and the same is true when a motorman is driving a train or operating a train and someone jumps in front of him, and he goes through this experience, it has been decided by the doctors that he should not immediately resume operating the train, he should calm down.

THE COURT: If a clerk experiences a robbery, how much time are they given off?

THE WITNESS: They are given up to five days, but it averages three days. They have different tolerances. Some of them take off no time. If their

nerves are shot and they go to their doctor and the doctor prescribes they should have some time off, they may get up to five days, but it averages three days.

None of these are reported to the National Safety Council because under their rules it is not required. Other agencies are encountering these sort of conditions, but not to the extent that we are.

THE COURT: When you say booth robberies and you have a figure for 1973-74 of 1049, are you talking about the number of robberies or the number of days off?

THE WITNESS: No, number of robberies.

THE COURT: The next category says allowed time to motormen who struck person on track. Are you talking about the number of incidents or the number of days off?

THE WITNESS: No, this 207 is consistent with the number of -- the other number we gave you that showed the number of persons hit or struck by a train.

THE COURT: Number of incidents?

THE WITNESS: Yes, number struck by a train. Of course, we show the Transit Police arrests. What we are showing here is that we have a very chaotic condition, a very difficult condition, over and beyond what is normally thought of in the safety area as the hazards of the job.

MR. SUMMERS: I offer GG-7 into evidence.

MISS DuBOIS: Objection.

THE COURT: Overruled.

(Defendant's Exhibit GG-7 was received in evidence.)

Q You are turning now to GG-8 for identification.

A We have given you some background material as well as the functional organization, and here we have taken each of the departments and we listed the various hazards.

At the top we have shown the main hazard that the department has. That doesn't mean it is the only hazard, but in the organization of our work force and the interrelationship, the functional interrelationship, and so forth, these are the hazards that we have in mind when we direct and control this operation.

The Rapid Transit Transportation Division, the main hazards are passenger accidents, 2399. These passenger accidents occur boarding, on board, between cars, falling under trains, fires, smoke, crime, drinking, drugs and vandalism. In addition, we have hazards from train operations and interruptions to the passenger. We have collisions and derailments, we have fatalities. This is especially true among our employees.

THE COURT: The 2399 figure is the composite of

Items A through E; is that right?

THE WITNESS: No. These are the main hazards of the department. What I am doing is highlighting the main hazard in the department.

THE COURT: I am trying to get -- the 2399 is based on any and all of those --

THE WITNESS: No. It is a highlight. It is all of the passenger accidents. I am not highlighting the employee accidents, although we do have employee accidents right here, fatalities.

It is a dangerous area and especially a high incident of fatalities, on the tracks, the yards and the structures.

THE COURT: I don't know what -- are you telling me the 2399 is just passenger accidents but your description there relates to hazards to both employees and passengers?

THE WITNESS: Yes.

THE COURT: Is that right?

THE WITNESS: Yes.

In the organization of the department, we have to be concerned by both, but in this area the main hazard is a passenger hazard, and that's where we, of course, look first.

Equally so is our problems with our employees.

As I noted here, we have assaults on motormen and conductors. The station, the same thing.

The highlights, or the No. 1 problems, is again passenger accidents. But in addition to the passenger accidents that occur on the stairs, escalators, platforms, emergency evacuation, crime, drinking, drugs and vandalism, we also have the station booth robery and assaults on our employees, and then on the station cleaning we have the chemical hazards from that.

On the maintenance of ways, however, we switch now to severity, and we have a high frequency rate there. In looking at the hazards ofthe job we are concerned with severity, which means the length of the injury. In other words, while we have -- we also have a high frequency, very often the injury will last longer because of the nature of the work.

THE COURT: What's the 1802 figure?

THE WITNESS: The 1802 figure is the hazard rate, and this compares to the quarry industry that is fifth.

THE COURT: What's the hazard rate? You get that by --

THE WITNESS: By going back to your formula.

THE COURT: On Chart 7?

THE WITNESS: The formula of days lost divided by man hour exposure time, times 1 million hours.

THE COURT: That equals 1802 in your case?

THE WITNESS: Yes.

THE COURT: Just on maintenance of way situation?

THE WITNESS: Just on maintenance of way. We are analyzing each department and the highlight of that department. The maintenance of way, we are dealing with an extremely dangerous severity rate. We have listed the areas where this occurred, these kind of serious accidents occur, struck by train because they are out on the tracks, the burns from the power and the facility maintenance, construction industry type, climbing, lifting, hauling, and, of course, the fire prevention.

We go into the power department, the department you asked about. Again, we have a high severity rate

which compares to the coal industry -- excuse me, compares to mining except coal.

THE COURT: What I am wondering about is-- let's go back to 7. I don't understand these formulas. Frequency rate equals lost time accidents divided by man hour exposure times 1 million. That doesn't really mean anything to me.

THE WITNESS: The exposure hours is the number of paid hours, not the working hours, but paid hours.

THE COURT: What are you doing? You are taking the -- is this calculated per year?

THE WITNESS: Yes.

THE COURT: How would you calculate it for the Transit Authority? What would You do to calculate the frequency rate?

THE WITNESS: A lost time accident is an accident where a person loses a day's pay or more.

THE COURT: You would then add up for the whole Transit Authority -- you are really talking about just Rapid Transit; is that right?

THE WITNESS: Yes. We will get into the Surface too.

Assuming it is all the Authority, we would add all the lost time accidents up --

THE COURT: In other words, you take all the hours -- is it hours?

THE WITNESS: No, this is the number of lost time accidents, on frequency.

THE COURT: Number of accidents?

THE WITNESS: On frequency.

THE COURT: That required --

THE WITNESS: That a person is off more than a day, meaning that it is an accident of some importance. A man may have an accident and go to a first-aid room and be treated there, cut, burn, things of this nature, or he may actually have a back injury or things like that --

THE COURT: So it is a day or more?

THE WITNESS: Of lost pay.

THE COURT: A day or more?

THE WITNESS: A day or more. We are not getting into the length of the time infrequency.

THE COURT: Look, then, the man hour exposure is what?

THE WITNESS: The number of hours actually worked, not paid, but worked.

THE COURT: In, say, a year?

THE WITNESS: Yes, any period of time.

THE COURT: I don't understand. Dividing the

number of accidents by number of hours worked, why do you multiply by a million?

THE WITNESS: The fewer hours worked, the less you run into certain matters of reliability, and in our area we have a large number of hours and therefore it gives it more validity.

THE COURT: Why?

MR. SUMMERS: It's to get the decimal place, isn't it?

THE WITNESS: The decimal place and also the fluctuation.

THE COURT: Let's take for 1973, what were the components or whatever the last -- you say in 1973 -- when was this figure last calculated for the Transit Authority, if it was calculated?

THE WITNESS: We calculate it every month. We keep records every month. I can bring our safety man in and give you this figure, put him on. You can go into detailed questioning.

THE COURT: All I am trying to do is really just understand it, because I don't have much -- let's taek the last one.

THE WITNESS: Let's go back to the point of what it means by frequency, what we are trying to establish here

and the difference between that and severity.

On frequency, we are dealing with only lost time accidents where a person has been off a day or more. What we are trying to determine here is the number of accidents that result in lost time.

THE COURT: In other words, you get a certain rate and you basically compare the number of accidents with the man hours worked?

THE WITNESS: Right.

THE COURT: That's your basic comparison; is that right?

THE WITNESS: Right. If he worked only one hour and one accicent, it would be, you know, a horrendous figure.

THE COURT: And your severity, you are taking a little different comparison, you are still comparing something with the total man hours worked, but you are comparing the days lost; is that right?

THE WITNESS: Yes. This figure is in there, but now we get into the length of time you are offer, not just one day or more. It might be 30 days, it might be a fatality, and so forth. This is a national comparison, developed by the National Safety Council, and what it basically does is to give the operation a chance to look

at three figures.

First, the total number of accidents, and, of course, the total number of accidents will relate to these two other figures because the more exposure to accident, the more likely you will have a lost time accident. The more lost time accidents, the higher your severity rate is likely to be because, you know, you can't control that you are just going to be off one day.

Then you get five days, thirty days. It gives the operating people a chance to begin to look and to prevent and to work at your conditions and compare it.

THE COURT: Back on 8 you have maintenance of way, high accident severity rate, 1302. It says compares to quarry industry. I am very ignorant of the quarry industry.

THE WITNESS: Among the 42, that's 5th, and in power, the mining underground except coal industry is second.

THE COURT: Second of the 42?

THE WITNESS: Yes. Second highest.

THE COURT: Okay, well, that helps.

THE WITNESS: When you go to car maintenance, you see you are getting into a different type of operation. Here we are dealing with an operation, and the major hazard

is the frequency rate. If you will look at the kind of operations and the reasons for it, you will see this is an operation where we are likely to have a great many injuries, but not to the degree of the severity in the other two operations.

Obviously, if you get hit by a train you will be off a lot longer than if you receive a burn or you get cut. You may lose a finger and things of this nature in this type of an operation.

THE COURT: The 25.61 compares to mining underground except coal industry?

THE WITNESS: Yes, they are second on that.

THE COURT: Second out of what?

THE WITNESS: Out of 42. The coal industry is 1. Now we get to Surface Transportation, and again, there we deal -- the highlight, the most important thing.

THE COURT: We are not through. GG-8, are you offering this?

MR. SUMMERS: Yes, GG-8 is offered in evidence.

THE COURT: Any objection?

MISS DuBOIS: Objection on the same grounds previously noted.

THE COURT: Overruled. Received.

(Defendant's Exhibit GG-8 was received in

evidence.)

BY MR. SUMMERS:

Q Would you move on to Exhibit GG-9 and tell us about that?

T5 THE WITNESS: In surface transportation again in managing our operation there the prime problem and many hazards are passenger and traffic accidents. The passenger accident, of course, is the accident to the passenger, and the traffic accident is to the vehicle. But there is a direct relationship between the traffic accident and the passenger injury.

As we point out here we see again the four categories that concern us the most, and some involve our drivers. Of course the traffic accident involves our driver. I don't want to leave the impression that our drivers are at fault on these traffic accidents. Most of it has to do with the congestion in the City of New York. Most of them are not particularly the drivers in the city.

THE COURT: When you say poor drivers you are referring to your drivers?

THE WITNESS: No, I said I am not referring to our drivers.

THE COURT: All right. That is the other drivers, is that right?

THE WITNESS: Yes. Sometimes our drivers are at fault, too.

THE COURT: All right. Is there anything else on this? I think it pretty much speaks for itself.

THE WITNESS: Yes.

THE COURT: Are you offering Exhibit GG-9?

MR. SUMMERS: Yes, Exhibit GG-9 is offered in evidence.

THE COURT: Is there any objection?

MS. DuBOIS: Objection on the same grounds previously noted.

THE COURT: All right, the objection is overruled. It is received.

xx (Defendant's Exhibit GG-9 received in evidence.)

MR. SUMMERS: Turn to Exhibit GG-10.

THE WITNESS: We have here now the promotion and entry chart, the operating titles and our annual titles. I want to go over this rather slow and I am going to have to stand in front of the chart to do it from time to time. We were asked to prepre an organizational, or a promotional--

THE COURT: This is Exhibit GG-10 you have got now?

THE WITNESS: Yes, sir. And if you will note the key down here, one is promotional only in the green, and the black is entrance and promotion, and red is entrance only.

Now you will note these red titles, red boxes are the entrance only titles. And here we have cleaner, porter and caretaker, a watchman --

THE COURT: Wait a minute.

THE WITNESS: We are only dealing with the red.

THE COURT: I'll tell you, you don't need to leave the chart, just as long as I understand it.

THE WITNESS: All right.

THE COURT: Let me just look at this a minute.

THE WITNESS:This is Rapid Transit now, hourly. And also into the supervisory, or these annual, this annual designation that we had earlier.

MS. DuBOIS: I just want to clear up some confusion in my mind, and which perhaps the court's mind also. What I have in order as number 10 is apparently number 11.

THE COURT: I guess they are doing it out of order. That's all right.

All right. I think I understand the C categories. The B is entrance and promotion.

THE WITNESS: Yes.

THE COURT: Let me look at those. You have got this asterisk for bus, engine maintainer, it's a surface title. Why have you included that in your rapid transit? Is there any reason --

Where are we on that?

MS. DuBOIS: Here (indicating).

THE COURT: Bus engine maintainer up at the top.

THE WITNESS: Yes. We do permit our people to move into those titles by promotion. Let me explain--

THE COURT: In other words, they can move from one to the other.

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: Let me explain. Much of this movement is the result of first the realization that the familiarity with the system is an important factor in promotion. People who are on the track or around the vehicles and so forth learn something in personal safety. Learn something in the handling of passengers. Even though they may not do the job. They learn something about the tools and the equipment and the need to get on the job promptly and the attendance and all these sort of things.

Therefore we have encouraged it. The other thing is that the requirement on these entry titles is only six months before they can promote, and this was done in order to encourage the upward mobility of the minority groups, and this was years ago because the Transit Authority started this many, many years ago.

Therefore people that may move here into the so-called entry titles only, do have a great amount of mobility into the upper jobs and they don't have to stay for

long periods of apprenticeship on those jobs. If they can pass the examinations that are required from people on the outside.

Now as you can see this group here can move here and then these groups here have considerable mobility. And as an example these red titles here move almost anywhere in the transportation area and can also go into the mechanical area.

All of these titles require a training. First they must pass the examination, Civil Service examination. All are given training first on the job itself in the safety requirements and passenger relations. In addition, these people over here and in here (indicating) are hired directly from the street.

We can find in many instances similar skills, however again extensive training is required in order for the familiarity. And it is true on all the promotions.

The station agent is a particularly important title because it is the major entry point for females into our system.

THE COURT: What is that?

THE WITNESS: For females.

THE COURT: Which one?

THE WITNESS: Station agent. Or the railroad clerk

as we call them. As a result many of our female employees have moved on up into tower men and into supervision.

THE COURT: I guess we don't have to get into the female--

THE WITNESS: No, but it is interesting because it is a major entry title for female.

THE COURT: All right. What is the next one you are going to use?

THE WITNESS: The next page is --

MR. SUMMERS: Exhibit GG-10, your Honor, is offered in evidence.

THE COURT: All right. Is there any objection?

MS. DuBOIS: No objection, your Honor.

THE COURT: It may be received.

(Defendant's Exhibit GG-10 received in evidence.)

MR. SUMMERS: May the record note the witness is now looking at Exhibit GG-11 marked for identification.

THE COURT: Yes.

THE WITNESS: Electrical helpers move in here, they may promote and therefore they promote they must go into a year's training. Structural helpers, they must undergo a training period, usually a year --

THE COURT: I'm not with you. I am just trying to make a note.

THE WITNESS: All right.

THE COURT: By the way, we are now using Rapid Transit as distinguished from Surface.

THE WITNESS: Yes.

THE COURT: In other words, within the Transit Authority that is the term, the way you break it down.

THE WITNESS: Yes. We really have two businesses and they are operated as two separate businesses.

THE COURT: All right. Rapid Transit and Surface.

THE WITNESS: And Surface, that's right.

THE COURT: All right. Now back to Exhibit GG-11. What is, or, what does it say that Exhibit GG-10 did not say? I'm not clear?

THE WITNESS: We are dealing with different titles is all. Here we are dealing with electrical maintainers, the structural maintainers and you may recall on our organizational chart these titles, all these titles fall under the maintenance of way department.

They are involved in structure or track maintenance. And if you note here these are the various categories of electricians. Actually they are separate titles and they are not interchangeable. A helper comes in --

THE COURT: In other words, Exhibit GG-11 is all maintenance and --

THE WITNESS: And Rapid Transit. Maintenance of way.

THE COURT: Maintenance of way.

b2 THE WITNESS: Yes, and these are the various titles, writing, signal, elevator, escalators, power distribution--

THE COURT: All right. There is no need to read that. I think I have GG-11, now where do we go from here?

MR. SUMMERS: I offer GG-11 in evidence.

THE COURT: Is there any objection?

MS. DuBOIS: No objection.

THE COURT: It may be received.

xx (Defendant's Exhibit GG-11 received in evidence.)

MR. SUMMERS: Would you turn to Exhibit GG-12.

THE WITNESS: There again we have the same key, the ABC, and between the entrance only, entrance and promotion and promotion only.

Now as you see here the cleaner-caretaker is a title that appears both in Rapid Transit and Surface, and they can promote to titles both in Rapid Transit and in Surface as an entry title.

It's the same general principle as the other map. Same rules and regulations. For promotion.

THE COURT: I take it that there isn't any automatic promotion because of seniority. I mean, it's

on merit and we have to have the qualifications, and the qualifications are ascertained by tests and so forth; is that right?

THE WITNESS: Yes. And there are physical requirements and length of service and all of these that are set forth in the examination notice that's published by the Civil Service Commission.

THE COURT: All right.

MR. SUMMERS: I offer Exhibit GG-12 in evidence.

THE COURT: Is there any objection?

MS. DuBOIS: No objection.

THE COURT: All right, received.

xx (Defendant's Exhibit GG-12 received in evidence.)

MR. SUMMERS: That completes the use of the chart. That would conclude the presentation of Mr. McLaren, your Honor.

THE COURT: Well, I had this subject which I said I wanted to pursue further, and it may not be productive but I was not really satisfied completely about the policy of the Transit Authority as far as excluding past heroin addicts.

You do not intend to get into that? You know what I am talking about.

MR. SUMMERS: Well, I might approach it this way,

your Honor: Mr. McLaren did, as I recall, testify in answer to your Honor's questions that the consideration had been given to the employment of a person as a bus driver who had been previously an admitted addict ten years previously. I think the answer was that we would not hire him.

Now, is this the area you want to get into?

THE COURT: No. You were good enough to come in on kind of a short notice basis that day and we went sort of rapid fire through a number of things. My feeling is this: that if there is any reason for a current review of your policy category by category I feel that is the job of the Transit Authority rather than my job. I am not just clear about where we stand on that.

This is my memory of it, Mr. McLaren, and you can correct me if I am wrong, that the blanket exclusion policy has been in effect for a long time.

THE WITNESS: Yes, sir.

THE COURT: And that currently there is some consideration being given to reviewing that policy, and the way you are approaching that review is this: If there is a particular occasion for reviewing it in connection with a category, for instance if somebody applies to be a bus driver, then the powers that be at the Transit Authority will review that category. They are not undertaking to give

individual consideration to that applicant. But they will review that category to determine whether they will change their policy and henceforth give individual consideration to the merits or demerits of individual applicants for that category.

Now, that is a kind of complicated formulation, but my memory is that that is about the way you described it to me.

Further you have actually conducted that review for one category, that is bus driver, and you have determined that you will not consider past heroin addicts or methadone people for bus driver positions. That is, the blanket exclusion policy will be continued for bus driver positions.

That is a long explanation, but I am sure you are sure you are familiar with the ground I am covering, am I correct that that is what your position is right now?

MS. DuBOIS: Your Honor, could I clarify? Because the last time that I remember--

THE COURT: I'll tell you, I don't think we are going to have clarification of the -- just wait a minute.

I follow you, and much of it is correct.

You correct me if--

THE WITNESS: I would like to enlarge on it a little more.

THE COURT: All right.

THE WITNESS:Yes. Let's take an example, the man that were talking about ten years back, what happened. He has been supposedly drug free,as he presented himself to us, for ten years.

THE COURT: Was this an actual applicant?

THE WITNESS: Yes.

THE COURT: For a position as bus driver?

THE WITNESS: As bus driver.

THE COURT: When did he apply?

THE WITNESS: Well, within the last maybe 90 days, 60 days, something like that.

THE COURT: All right.

THE WITNESS: Rather recently. Now the instructions are first all cases would come to me by law because under the legislative requirement I must review all of the terminations or pass-overs and things of this nature. But specifically in this area we have --

THE COURT: Well, he was a new applicant, wasn't he?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: But he is an applicant in one sense, but he is also on the Civil Service list and therefore as far as passing him over --

THE COURT: Well, exactly what was his status? He was on the list?

THE WITNESS: Yes.

THE COURT: Which means that he had done what, taken a test?

THE WITNESS: Taken a test and he was entitled and passed it therefore he was entitled to a position on the list, and when his position comes, say he is 87 on the list, he is entitled to be brought in to see if he passes the physical requirements and other requirements for the job.

There is an interview process, look over his record, veteran's preference, all those things are then brought out at that time.

THE COURT: And he was down the list, but he was at a point where you would screen him?

THE WITNESS: We would screen him and for determination if he is qualified and ready for a job.

THE COURT: Now let me just ask you, if you had found him, suppose there was no heroin problem of anything, and he was perfectly qualified what would happen to him then, he would work his way up the list?

THE WITNESS: Well, when his turn, numerical turn on the list came up he would brought in and put to work.

THE COURT: But what happens the numerical turn--isn't there a choic of one of three or something like that?

THE WITNESS: Well, that occurs when his turns comes to be called in.

THE COURT: I'm so unfamiliar, just explain it to me, please. His turn comes how?

THE WITNESS: Say on the bus, we give an examinatio and maybe 40,000 people would turn out to take the exam. 20,000 will have an acceptable score.

THE COURT: This is a written test.

THE WITNESS: Written test. Those then are rated from 1 to 20,000. Then we start working on the list. We take number 1, we call him in. If he doesn't come he loses his place. If he does come in then he goes through a procedure. medical, the interviewing, fingerpring, etc.

If at the end of that he is qualified, he's hired. Now, there is one exception. There is a provision that the Authority does not have to take every single person automatically in position, they have what is called a 1 in 3 requirement, and it's, for simplicity, that is if there are three applicants you may strike one of them.

THE COURT: Well, how does it work? In other words, if you have worked up to a certain point and there is somebody that is 1, 2 and 3, three people, 1, 2 and 3,

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are you able to take any of those 1, 2 and 3?

THE WITNESS: Yes.

THE COURT: And you can strike off permanently the other two?

THE WITNESS: Yes. Out of order. They can be taken out of order, in other words. The number 1 man may not have to be taken.

THE COURT: You can take number 2?

THE WITNESS: 2, right.

THE COURT: Or number 3?

THE WITNESS: Right.

THE COURT: You can't go down to 7 or 8?

THE WITNESS: No, you must still follow the list.

THE COURT: Now if you take number 3 what happens to number 1 and number 2, do they remain on the list or are they bounced?

THE WITNESS: Well, you would be skipping two there.

THE COURT: Yes.

THE WITNESS: Let's take 1.

THE COURT: You take number 3, and so --

THE WITNESS: Well, they would be called passed over, and then there is a procedure, I believe it must be passed over three times, I believe. They are still on

the list, but after the third time they are off.

THE COURT: They are off the list?

THE WITNESS: Yes. They work their way up.

THE COURT: All right. Now, after that, I understand the mechanics, now let's get back to this bus driver that you were telling me about.

THE WITNESS: The instructions are that in the event that we have a person who has a record, a long time record of drug free, that before we take any action that it should be referred to me, and this case came to me, and I have asked, I sent him to our consultant --

THE COURT: Who was that?

THE WITNESS: Dr. Trigg. And the purpose of that is to determine the -- to give him a psychiatric evaluation as well as a drug evaluation. I received a reply from him about two weeks ago, as I recall, and he made a recommendation, and I have discussed that recommendation with our senior executive officer, my boss, and it will be on the agenda of our executive officer meeting.

THE COURT: Well, there is a distinction that I am trying to make, and maybe it's not a realistic distinction, but I am trying to figure out -- I am not really trying to get into individual cases, but I am trying to find out what your policies are.

Now, are you willing now to consider this man on his individual merits? In other words, are you willing to consider him as an individual, and if he passes on individual merits hire him, or is there some blanket exclusion policy that you are going ti --

THE WITNESS: You are right partially. You are not wrong partially, but you are right partially. In this respect: We have in the bus operator a policy of exclusion. You are right. But we also have a procedure as I pointed out before that on these individual cases that come up of this type that they come directly to me. And I had made the statement that we really haven't had this occurrence, but recently we did have a man who stated, or claimed that he was drug-free and had been so for ten years, and that that was under advisement. It had just occurred.

Since then he has been sent to the clinic, and now getting back to your point obviously if we should agree that this man would take a chance and bring this man in and someone else came along with the same type of a background, and a bus operator, we would do the same thing for him.

So we must tackle the problem of the exclusion in the bus operator as well as the question of the individual. That's the way we have--

THE COURT: Then can you define for me what your policy is, and I am distinguishing policy from action in an individual case. What is your present policy with respect to a man who applies and says he has been a former heroin addict but he has been off heroin for ten years? What is your policy about such people? Or is it still being decided on?

THE WITNESS: It's being decided. This is the first example that we have had.

THE COURT: Now who is going to decide on that policy?

THE WITNESS: Well, I have discussed it with our executive officer. I made a recommendation.

THE COURT: That is Mr. Berry?

THE WITNESS: Mr. Scannel, senior executive officer.

THE COURT: Mr. Scannel?

THE WITNESS: Yes. Mr. Berry is an executive officer like myself.

THE COURT: All right. But you say you discussed it. You said it was on an agenda. Now, an agenda of whom?

THE WITNESS: We have weekly a meeting of the executive officers' group, and these are the key officials, the man heading Surface, the man heading Rapid Transit, the

law department, etc.

THE COURT: Well, no, wait a minute. I want to know who meets together.

THE WITNESS: Well, this group, as I said.

THE COURT: And you call them what?

THE WITNESS: This is called the senior executive officers' meeting.

THE COURT: Tell me all of them.

THE WITNESS: By name?

THE COURT: And title, yes.

THE WITNESS: Mr. Frank Berry, the executive officer for operations and maintenance; Mr. Marcus Gibson, who is the general superintendent of Surface; Mr. John de Roos is the general counsel; Mr. Andrew O'Rourke is the comptroller and executive officer for finance, and Mr. John O'Neil is the executive officer for engineering. And the executive officer, a man named Frederick Wilkinson that was just recently appointed for passenger relations.

THE COURT: This is the executive group that meets?

THE WITNESS: Right.

THE COURT: And this problem of this bus driver applicant will come up before that group?

THE WITNESS: Not exactly that way. The problem, or, the question of whether we change our completely

exclusionary policy based upon the background of this man, plus the information that we developed from various community sources, and from our consultants.

THE COURT: In other words, the question of policy will come before this group.

THE WITNESS: Yes, right.

THE COURT: Well, that is really what we are talking about here.

THE WITNESS: Right. Exactly.

THE COURT: When will that come before them?

THE WITNESS: It will be either next week or the following Tuesday.

THE COURT: Will this be a question of policy as to -- what question of policy will come up? What I am trying to get at, will this relate to just bus drivers or will it be more general? What will be the extent of the consideration at that time, if you know?

THE WITNESS: Well, let me go back a ways. I think we pointed out that while we have had this rule and regulation for many years, no one can remember an incident thatwe ever picked up an employee for violation of drugs. Nor on an examination.

THE COURT: Well, when you say nobody can remember an instance where we picked up an employee for drugs, I

don't understand that.

THE WITNESS: Well, we know of no instance, we have had men that have been 30, 40 years and more that cannot remember any employee being charged with violation of that particular rule on drugs or the use of drugs, or being under the influence of drugs while he was working.

THE COURT: On the job?

THE WITNESS: On the job. Also our doctor has been there for over 30 years and he does not remember the disqualification of an applicant. This started in around '69. This is when we had the -- our records at about the time --

THE COURT: But what you're basically saying is that before 1969 it just wasn't a problem.

THE WITNESS: Never encountered it.

THE COURT: Nobody was really thinking about it, and so --

THE WITNESS: We didn't have it.

THE COURT: In effect, if it was a policy it was a kind of an unconscious thing; is that right?

THE WITNESS: No one was in violation of it.

THE COURT: All right. Go ahead.

In 1969 you started--

THE WITNESS: Yes, and suddenly we began to find

evidence of it on the property, and we --

THE COURT: You mean evidence of employees using drugs on the job?

THE WITNESS: Yes. On the job. And we also found evidence on our applicants, such as trackmarks and other physical evidence. The doctors had been finding those. And so at that time we put in the urine test, and that's when we found that approximately five and a half per cent or more of all employees who were examined, under 35 years of age, were drug users. Both hourly and current salary.

THE COURT: You mean current drug users?

THE WITNESS: Current drug users.

THE COURT: And you were administering these tests to existing employees under 35 years of age?

THE WITNESS: Right. These were applicants, the list, people off the list.

THE COURT: Wait a minute. Be careful now. Because when you say employees I thought you meant--

THE WITNESS: Excuse me, applicants, yes. Applicants off the list.

THE COURT: All right. And you started in 1969 or thereabouts to administer the urine test to all applicants?

THE WITNESS: Under 35, yes.

THE COURT: Under 35.

THE WITNESS: Yes.

THE COURT: And you found about 5 per cent of them had evidence of --

THE WITNESS: 5.5.

THE COURT: Of current drug usage?

THE WITNESS: Right. Current drug usage.

THE COURT: All right.

THE WITNESS: Now, we also have a system of referral of employees to the medical department that have peculiar behavior on the job.

THE COURT: These are present in actual employees.

THE WITNESS: Employees, right.

THE COURT: All right.

THE WITNESS: And we were finding about 10 per cent of the employees that were referred to this category, we found evidence of drug use in the urine test. And this was astonishing to us as it was to the nation about that time, waking up to the problem of drug use. And there wasn't any change in the rule or the attitude. The rule was always there and the attitude was always there.

So the rule was enforced.

THE COURT: All right. And that rule was?

THE WITNESS: We did not hire--

THE COURT: Any of the people that you found

evidence of --

THE WITNESS: Right.

THE COURT: And you discharged the existing employees?

THE WITNESS: The existing employees, that's correct. Now, I had gone through in the past testimony about the procedure we use and all this sort of thing, you know, the consultant and the problems we had in those early days beginning to understand the problem and that sort of thing. Now, in our experience we have not run across people who were using drugs back ten years ago, and so forth. This was apparently not done to any great extent.

Now, we at one time in our discussion actually drew up policies, you know, procedures and discussion and so forth which should be a cutoff date, should there be a cutoff date. Because we are mindful of the fact that on the alcoholics if they refrain or abstain from drinking they were permitted to continue employment, what should we do on drugs? And we kicked around the various ideas. Should it be seven years, eight years, nine years, ten years, five years and so forth.

We had not encountered or experienced anyone in that category. So we simply said, well, rather than to draw up any firm policy or try to develop anything

differently than the policy we presented to the state hearing on drugs, I think it was Senator Hart, we would simply say that the--

THE COURT: Were these state hearings or senate?

THE WITNESS: State senate, I believe.

MR. SUMMERS: State legislative hearings, I believe.

THE WITNESS: The Civil Service rules on drug use that Dr. Lanzetta signed --

THE COURT: Is that in evidence?

MR. SUMMERS: It was offered, but it was not accepted.

MR. BALBER: The plaintiffs offered it.

THE COURT: All right, well, let's reconsider that. All right, go ahead.

THE WITNESS: We then said that in the event that we run into these sort of circumstances, then we will review our policy. We didn't have any of these before us.

Now, this is the first time we have had any one of this category. This is a man with ten years. So therefore we are following the kind of a procedure we do. This is a major item, a major policy decision. It would go on this agenda.

Now it's not the first time we have discussed this sort of thing, but this is an actual case.

THE COURT: My question was, would this consideration be just on bus drivers or a kind of broad consideration or the whole Transit Authority employment? Or don't you know?

THE WITNESS: Well, the answer is I don't know positively, but I do know this, that the bus driver is a critical operation.

THE COURT: So if there was a relaxation on bus drivers it would follow there would be a relaxation on some --

THE WITNESS: Lesser --

THE COURT: Yes, or similar.

THE WITNESS: Yes. And the other factor is that the bus driver has direct contact with the public, and the problem that we see in relaxation of the policy is the credibility of the system. Now, whether the public accepts this, this is part of the risk that we have to take and that's why it goes into a group that are not only connected with the operation, but with the passenger, the safety and the whole gamut.

THE COURT: All right. Now let's pass from the person who is or claims to be drug free for a period of time. Let's pass from that to the person who claims to be free of heroin, but being treated on methadone. Now, that is the bulk of the testimony in this case, that has been about

those people. Again I don't want to repeat something that was testified to by you before, but I am frankly not clear on what recent -- well, I'm just not clear on the generation of your policy on the methadone people and whether there has been any attempt to consider that policy on all categories in the Transit Authority, and whether there has been any recent review or whether there has been any intended review.

I think you told me, and I could be wrong, that there was at one time some thought of going through each category of Transit Authority employment and reviewing the, you know, whether you would consider a methadone case but you hadn't done it. Am I right?

THE WITNESS: I believe that I referred to a situation that had occurred in our discussion with the city and their policy on the hiring of persons involved with drugs.

At one time we had discussed in the course of events of other developing our examination that that review would occur.

THE COURT: And that review being what?

THE WITNESS: A review of the drug aspect, a special kind, you know, rather than the normal kind that happens routinely on the examination. But we did not proceed with

that because of this action. At least that is my understanding we did not, that the whole --

THE COURT: If we could just be a little more precise, what was it that you were thinking of doing but for this action? I am just not --

THE WITNESS: I wasn't thinking of doing anything. But the city had said that they had established a new policy concerning drugs, and --

THE COURT: That was the 1972 --

MR. SUMMERS: The policy statement.

THE COURT: It happened in the spring of 1972. In other words, their policy as I understand it now is there is no blanket exclusion for a drug person except in the uniformed services and in the employment categories other than the uniformed services there will be individual consideration; isn't that basically it?

MR. MORRILL: Your Honor, the city stipulated that there is indeed no blanket policy in the uniformed services, that they are allowed to hire people there, there is no blanket exclusion.

THE COURT: But that policy statement--

MR. MORRILL: The policy statement is not applicable to the uniformed services.

THE COURT: And that was back when, in March of 1972?

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MR. MORRILL: I believe so.

THE COURT: Was that the occasion for what you are talking about?

THE WITNESS: Yes, because we have citywide titles.

THE COURT: All right. Now, can you go through what happened then?

THE WITNESS: Well, we had some preliminary discussions on that and how it might be handled, and of course we are a uniformed service, too, as many of our employees are in uniform. We are a rather large agency and therefore we discussed how we might approach this.

Now, we had this actual colloquy between whether or not the city can tell us, an independent agency who is responsible for running the agency, what we should do in this very critical area. And this is the factor. I am not going to get into that, because this is a matter for the lawyers. But, in general, that we work very closely with the personnel department, and we discussed a procedure that we might follow in order to do that.

Now, we looked at it --

THE COURT: It's too vague. To do what?

THE WITNESS: Well, whatever the service was to be. We didn't get to that. It's the titles, and so forth that might--

THE COURT: I'm not clear. What was the objective under discussion?

THE WITNESS: Well, the first question that came up is, does the city personnel department have the authority to invoke a city policy on the Transit Authority.

THE COURT: What position did the city personnel department take?

THE WITNESS: They took the position that they did.

THE COURT: They did for all categories?

THE WITNESS: All categories of title.

THE COURT: In the Transit Authority?

THE WITNESS: In the Transit Authority.

THE COURT: And that is that they could fix the medical standards?

THE WITNESS: All standards.

THE COURT: All standards?

THE WITNESS: Right.

THE COURT: What position did the Transit Authority take?

THE WITNESS: Well, the Transit Authority took the position -- I'm not a lawyer, it was explained to me -- the Transit Authority took the position that by legislation we have the responsibility of running the transit system. And, secondly, we are a state agency.

Now, for purposes of Civil Service administration we work, or fall under the city personnel department, but that does not give them the authority and the right to unilaterally establish conditions that interfere with our major responsibility of running the system.

When it interferes with that, then we have the responsibility of calling it to their attention. From there on I suppose it goes to the various counsel, but--

THE COURT: But you took the position that you had the final say on the qualifications for employment in the Transit Authority; is that right?

THE WITNESS: Well, never as to routine, or-- even important matters. But matters that would interfere with our responsibility of running the system, we said yes.

THE COURT: You had the final say?

THE WITNESS: Well, I don't know--

THE COURT: You took the position?

THE WITNESS: Yes, that they did not have. They did not have.

THE COURT: All right. There was that issue and that was your position.

THE WITNESS: Right.

THE COURT: Now, what other issue?

THE WITNESS: The next question is whatever they

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wanted to do with it hurt us. And so we then proceeded on logical and peaceful people to find that out and we discussed the approach. Now our feeling was that we should take a functional approach. You asked for a functional organizational chart, we said that we could not take title by title. You had to understand the inner relationship and how they worked with each other and the hazards in the occupation and the relationship to passengers.

THE COURT: Let me interrupt for just a minute. You were saying you wanted to consider whether this new city policy would indeed be detrimental to the Transit Authority; is that right?

THE WITNESS: Right, before we started fighting.

THE COURT: Right. So you wanted to consider whether you could or could not adopt it; is that right?

THE WITNESS: How it would affect us.

THE COURT: How it would affect you. But ultimately the question would be, could you voluntarily adopt this policy; is that right?

THE WITNESS: Yes. Remember now, our employees and ourselves have a tradition of--

THE COURT: Wait a minute. I want to follow it, please.

THE WITNESS: Yes.

THE COURT: I want to get it clear. Because this is very important to me. You were considering with the city whether you would be willing voluntarily to employ this policy or whether it would be detrimental to you; is that right?

THE WITNESS: No, I wouldn't say that.

MS. DuBOIS: I don't want to interfere, but I object to this entire --

THE COURT: Entire what?

MS. DuBOIS: Leading of the witness into certain statements, because Mr. McLaren -- my feeling is that the court is leading Mr. McLaren into stating things which are completely in conflict with what is just clearly in the record and the history of this case.

THE COURT: I don't think Mr. McLaren is letting himself be led, and I am trying to save time and we are going to get to the facts and you have the right to cross-examine.

MS. DuBOIS: The facts are in the transcript of this case, your Honor.

THE COURT: What?

MS. DuBOIS: The reasons are in the transcript of the early proceedings of this case, the entire study and consideration of doing a study, and it's what Mr. McLaren

is talking about. He is indicating he doesn't know very much and the lawyers may know more about this, and that's true, because the reason this study was considered is because the lawsuit was brought and because your Honor urged everybody to either settle the lawsuit in some form that might involve a study--

THE COURT: Well, that is your statement now. If you want to cross-examine him--

MS. DuBOIS: According to the transcript Mr. McLaren doesn't know what he is testifying about and you are leading him into making statements which he doesn't have any information about.

THE COURT: I will try to avoid leading, but I don't think he is getting led and if you want to clarify it or contradict it or cross-examine, I am trying to learn some facts which as of the moment I do not have in my mind. If it is somewhere in the record it isn't in the trial record in this case clearly.

MS. DuBOIS: It's in earlier hearing records in this case.

THE COURT: Let's not waste time arguing on those.

MS. DuBOIS: Mr. McLaren doesn't know any of these facts and we are wasting time.

THE COURT: If he doesn't know you have a right

to cross-examine him. Now let's go. We are about to recess for luncheon, but I want to find out, and it goes without saying I am not suggesting -- I don't know the answers, I am not suggesting anything, but I want to find out about the consideration that we were talking about.

You have told me that there was some consideration given to doing something cooperatively with the city. Now, would you pursue that, please.

THE WITNESS: Yes. It was our attitude, or our thought, that we were in the category of the uniformed forces and would be excluded in the --

THE COURT: Well, what were you discussing with the city doing? When we got interrupted I was pursuing that and I want to continue and find out about it.

THE WITNESS: Well, we had this disagreement about whether it applied or not.

THE COURT: Right.

THE WITNESS: Then we got into a question of, well, maybe it's not going to affect you at all. And, after all, we considered --

THE COURT: Meaning be detrimental to you.

THE WITNESS: Yes, detrimental. And we considered that we were comparable to the uniformed, and that our employees were uniformed and traditionally have thought that

So we did not think we would have any problem with this.

b6 I don't know what the city thought.

THE COURT: Any problem in applying their policy?

THE WITNESS: We did not think that their policy on drug use or the hiring of a drug user, methadone or whatever they were, would apply to our operating and maintenance people in these areas.

THE COURT: Then what? Who were the discussions between?

THE WITNESS: Myself and Mr. De Ambrose.

THE COURT: Who is Mr. De Ambrose?

THE WITNESS: He is now the director of personnel, or the commissioner of personnel for the city. He was at that time a deputy to Mr. Brownstein.

THE COURT: What I am trying to get at is this: Was there any consideration of going through the Transit Authority positions on any basis, functional, category by category, in any way? Was there any consideration given to going through the positions and seeing whether methadone patients could be employed, or seeing what policy you could-- seeing if there could be a revision of your policy? That's ultimately what I am trying to get at and I am not at all clear on it.

THE WITNESS: I said that we had agreed to review

our jobs and from our point of view--

THE COURT: All right, now let's pause on that because I have just got to take it very slowly. You had agreed to review your jobs.

THE WITNESS: Titles.

THE COURT: Your titles.

THE WITNESS: Right.

THE COURT: Now, when you say we had agreed, who agreed with whom?

THE WITNESS: Well, I agreed that we would enter into this review with the city provided we could work out the procedure, how we would do it.

THE COURT: Who did you --

THE WITNESS: Mr. De Ambrose.

THE COURT: All right. When did that occur about?

THE WITNESS: When the city introduced this policy.

THE COURT: All right.

THE WITNESS: Now, I didn't agree that they had the authority to --

THE COURT: I am not saying --

THE WITNESS: -- to remove that policy.

THE COURT: I understand, you don't have to repeat that. You agreed, and then what?

THE WITNESS: The upshot of it, we got into a

discussion on how it would be done and who would do it.

THE COURT: All right, what was that discussion?

THE WITNESS: We took the position that it should be done on this functional basis and they were thinking in terms of title. And we talked about how the -- the composition of the people who would do it, you know, medical personnel people, and so forth, this nature, and that's about as far as we got on that.

THE COURT: Well, why was that as far as you got?

THE WITNESS: Well, we entered into this action and that seems to have disappeared. I can't tell you the details there. But it just disappeared as this started.

THE COURT: What was your thinking about how the review should be made? You say on a functional basis, what did you have in mind?

THE WITNESS: Well, first I was competent that we fell in the category of the uniformed operations and that would show -- it would show in there. And the other was that we should present and look at the job in the sense of a functional relationship. The chart that I showed here. That they are interrelated. Tower man, for example, is not in a tower by himself, but he must be related to the people he works with. The motorman, the road car inspectors, the maintenance of way and all the other things, and the

control room, all of the operations that he has responsibility for.

THE COURT: Well, there is one thing I still don't understand. I'm not talking just about some kind of review which would be used like an advocate to persuade the city that you can't employ methadone people. I'm talking about an objective review to determine objectively whether or not a methadone patient could be employed in a particular kind of a job.

Now, were you thinking, were you considering at that time having an objective review made without preconceived notions but having an objective review made of the positions.

THE WITNESS: We were biased from our point of view.

THE COURT: So is this correct, you were really going at it in order to persuade the city that you shouldn't have to employ these people?

THE WITNESS: Our attitude would have been that generally.

THE COURT: If this review had been made who would have made it? Where did you get that from?

THE WITNESS: We just got to maybe the classes, the categories of people, like doctors and personnel people,

things of that nature. I believe at one time we may even have discussed the persons involved in general.

THE COURT: Of who would make the review?

THE WITNESS: Yes.

THE COURT: So you would have a team of experts; is that right?

THE WITNESS: Yes. The city felt that they would, and we said we would use our own people. Like our own doctor and our own operating people, personnel people.

THE COURT: One more thing and we will break for lunch. You used the term "uniformed service." Now, there are categories of employment at the Transit Authority which are not uniformed services.

THE WITNESS: That are not in uniform, that's correct.

THE COURT: In other words, why would the city policy not be a good thing to apply to the non-uniformed personnel at the Transit Authority?

THE WITNESS: Well, because we feel that we have looked at this in detail and objectively, and first because of the conditions of the job, and secondly we just don't see practically how it can work and, third, the administrative handicaps.

We don't even see how it's possible to do it.

Let me give you an example. We have talked about a cleaner. All right now, most of the people that we are concerned with do not apply as a cleaner, did not come in and be rejected because they were on methadone or they were drug users because as a car cleaner they may have come in as a bus operator or a railroad clerk or a track man. So let's assume they come in as a bus operator. We were talking about this man "A" who had been rejected. He was a bus operator. Now, "B" comes in, and B is a qualified employee except for one thing, his peripheral vision is poor or he's color blind.

Now, he does not have the right to move over to car cleaner. He is disqualified. He doesn't have the right to move into any other job. But the methadone maintenance man or the drug user is supposed to be able to move over to the car cleaner job and take that.

Now, there are car cleaners on the list that have a right to that job. We have no right to move applicants from one list to another. We have to determine whether the applicant can do the job that he has a claim on. He doesn't have an absolute claim on the job. He must meet certain qualifications. Among them are the physical, the psychological, the job stability record. His veteran's record. His police record.

All of these things are taken into consideration.

Now, once he is rejected for that job he has no right whatsoever to go to another job and take that job before someone else does. Now secondly let's take a real example. We have about 1200 car cleaners in the system. We have disqualified over 750 people for drug use. If we put them all overto car cleaner that's all we would have is car cleaners. Secondly, after six months they are ready to move. We have no rules or regulations or legal requirement that says you can't promote. We start running into this whole question again, can they promote?

What about the qualifications--

THE COURT: Well, I do think we have to let everybody go to lunch so we will resume at 2:15.

(Recess to 2:15 P.M.)

AFTERNOON SESSION

(2.25 p.m.)

W I L B U R B. M c L A R E N , resumed.

THE COURT: My particular inquiry, I think, is satisfied. I think for the first time I understand what occurred, and something of the background of this question of the review of Transit Authority physicians to see whether there should be some revisions with respect to methadone. I say I understand the testimony.

Now, that's subject to cross-examination or subject to some rebuttal, if you have it, and it could be in the record of this case or any other source. I am just saying this, I have no further inquiry along this line to direct to Mr. McLaren.

Do you have any further questions?

MR. SUMMERS: No, I haven't.

THE COURT: Do you wish to cross-examine?

MISS DuBOIS: Yes, your Honor.

I would like to first, if I could, to try to save time on cross-examination and save calling witnesses possibly, City witnesses, to see if I can make a short statement about my understanding and history with respect to a study that was contemplated by the TA and the City and the Court's resolution and to see if Mr. Summers has any recol-

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lection, if it helps.

Your Honor, my recollection is that approximately a year and a half ago in the early spring or late winter of '72, at a Court hearing there was inquiry made by your Honor as to whether the TA hadn't done any study or anybody hadn't done any study about the nature of these jobs. And, I believe the City indicated either that it had studied certain jobs or it would be willing to study certain jobs and, in any event, the Court suggested very strongly at the close of that hearing that it might be prepared to stay the action over plaintiff's objections if an arrangement could be worked out whereby a study was conducted by the TA and the City jointly, perhaps with plaintiff's input, perhaps not.

That really resulted in an informal stay at that time of discovery. There followed negotiations between the TA, the City and the plaintiffs. The plaintiffs had two major objections which were submitted to the Court, I believe in affidavit form, as to one, the nature of the study contemplated by the City and the TA, and secondly objections that the TA had not given and was willing to give any commitment that it would go along with the results of a study.

At the first hearing it appeared, or at least the Court I believe understood the TA to indicate that it

would go along with the results of the study. We then had a subsequent hearing or a subsequent conference with the Court in the summer of '73 and that conference followed upon our submission of a detailed affidavit detailing how the TA had indicated to us that they would not commit to go along with the results of the study, even as we objected to the study.

At that conference, the Court indicated that under those circumstances it obviously would not stay the case, the case would have to proceed and the rest of the litigation followed.

By this time, it was the fall of '73. In other words, September of some time around then. I think that's the essence of what they have to say about that.

THE COURT: That sounds right, doesn't it, Mr. Summers?

MR. SUMMERS: Yes, but I think you did in the early stages of the case address yourself to the possibility that the City, that is, that a survey of the TA was on the way and it would take something like 24 months to complete it and by that time the whole 180 jobs or so would be considered by some review committee, doctors and so forth, and Miss DuBois said there is no guarantee the TA is going to accept whatever comes down and at that point a letter

was written to you saying that while we conceded the Civil Commission's jurisdiction, nevertheless we had an independent obligation of our own to run a safe railroad and if whatever came down conflicted with that obligation, we have to act accordingly at that time.

Then the whole thing ended and we just kept going without any more reference and to that aspect of the case.

THE COURT: This is a subject which obviously came up at that time, a subject that I raised at the beginning of this trial, and that is whether the Transit Authority would or should make its own review about the employability of methadone patients. It hadn't, and it's obviously the position of the Transit Authority that as far as methadone patients are concerned, it believes it is justified having the blanket exclusion. It is not proposing a review of that but it says, we have made our policy, it is a sound policy, it's a constitutional policy and that's where we stand.

Now, the Transit Authority has the right to stand on that as a position in this litigation. I think that's just where we are.

MISS DuBUOIS: Thank you, your Honor.

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CROSS EXAMINATION

BY MISS DuBOIS:

Q Mr. McLaren, you testified previously in this case as well as today about certain position papers relating to possible reconsideration by the Transit Authority of its ex-addict policy as distinguished from its methadone maintained policy. Is that correct?

A I think I testified that a policy had been submitted to, I believe, Senator Hart and that outlined the policy. In the course of developing that, of course, we, if you want to call it position papers, as I did, we advised and so forth and came up with the final policy draft.

The first position, of course, was our ruler question, what I am referring to appears at Page 532 in the previous testimony and again to make clear for the record, we are not talking about the methadone maintained people, but the drug free people.

"We developed a series of papers, so-called position papers on a policy, if we should hire drug people, what standards we should use, as to their police record, their employment record, their medical history."

What I wanted to know is whether you have those

position papers. You indicated at the time you didn't know whether you still have them. You may or you may not. You have those papers?

A I said today, I believe I testified to the effect that we got into the question of whether it should be ten years, nine years, eight years, seven years, and so forth, and the end result is we did not adopt it.

Q What I am asking you is do you have the position papers?

A Yes, I have one.

Q You have one position paper?

A Yes, the one that was a final draft.

Q Was more than one position paper developed?

A The others were not. We had different ones and this is the final draft. The others we didn't keep.

Q You didn't keep?

A No.

MISS DuBOIS: Your Honor, we have been asking since that hearing for the position papers. Could we have an order from the Court?

THE COURT: The position paper, singular?

MISS DuBOIS: Whatever position papers existed.

MR. SUMMERS: Your Honor, I think the witness

has said that during the discussion and the internal consideration of this policy certain papers were prepared by his staff, the end result was that he had made the decision not to change anything and I don't think the internal communications of the Transit Authority's staff is any of Miss DuBois' concern.

THE COURT: I think it is.

MR. SUMMERS: I don't think so, your Honor. I object to that.

THE COURT: There is no privilege. If they wish to have any drafts or internal memos about your consideration, they are entitled to have them.

MR. SUMMERS: I think for the purposes of this lawsuit --

THE COURT: I have just overruled that position.

Now I want you to produce all of those drafts or position papers that are still in existence that Mr. McLaren has referred to. You can review his testimony and I'm sure you know what he is talking about.

MR. SUMMERS: He said he had one paper.

THE COURT: You got up and objected to the production of others, so that would lead me to believe there are others which you are objecting to producing.

MR. SUMMERS: I am referring to the single paper

that Mr. Laren said was the end result of an interchange of correspondence or communications.

THE COURT: Are you representing that there are no other papers?

MR. SUMMERS: I am accepting Mr. McLaren's testimony that there are no others.

THE COURT: You can't produce something that doesn't exist, which has been discarded or thrown away. But, I am directing the Transit Authority to produce whatever still exists of the materials testified to by Mr. McLaren.

BY MISS DuBOIS:

Q Could you state for the record what does exist? You said previous drafts had been destroyed. Are there any other communications, documents, memos relating to the position paper?

A No. After the Senator Hart letter, we continued our investigation of this problem and the result is, we tried to come up with something that would modify this policy and we did come up with this one position paper which we used within my department and it was also discussed in the executive offices, I believe I explained that earlier. We usually submit some sort of document so it can be read and that's what we have. All other materials, in the preparation of the draft we threw away because we're

only interested in the one. I happen to have one copy.

THE COURT: Do you have it here?

THE WITNESS: No, I don't, but I do have it in our office.

BY MISS DuBOIS:

Q You testified just now, sir, that you considered in the development of this position paper or in considering it, employing persons who had been drug free somewhere in the range of seven to ten years, is that correct?

A No. I said we started with the question, unilaterally ten, and then kicked it around, ten, nine, eight, seven and never came to the conclusion where it should be cut off and finally decided this is all hypothetical, we're really dealing with the current drug problem.

The people we were examining either inside or outside the Transit Authority were current users. We had not run across a person of that category. Obviously unless there were track marks or something like that, after a period of time, you can't tell when a man is drug free.

Q Did you consider the employment of anyone with a drug history during a period less than seven years?

A Yes. We considered all times up to, I think it was about five years. But, when you say consider, this was a point of discussion, not actually adopted.

Q Were there any medical experts involved in these discussions?

A No, it was our own personnel, my own staff. Our own doctor.

Q Dr. Lanzetta?

A Yes, but we did not have outside consultants or anything like that. We had, of course, talked to them but not likely about this policy.

Q In your previous testimony, regarding again the reconsideration or possible reconsideration of the policy about former addicts, you indicated, or you testified that you had decided not to consider such persons, not only for the bus driver position, but for positions "in the critical pattern."

This appears at page 533 of the transcript. What is the meaning of the critical pattern, the terminology?

A I don't understand the context.

Q In your testimony you are talking about this considering the idea of possibly hiring former addicts not on methadone, as you say it would be a clear program of abstinence, not methadone.

You said that within the last two weeks you had a long discussion as to the question of the bus driver

and people who had abstained for a number of years, whether to consider that. That was an executive officer meeting.

And,

"THE COURT: What was that?

"THE WITNESS: We would not in the critical pattern --"

A I believe this was a continuation of the discussion today when you asked me if there had been any further development in the case ofthe bus driver. We were talking about that particular --

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THE COURT: Well, she is specifically asking what you meant by a term you used in your prior testimony. Can you answer her?

THE WITNESS: I don't really know. I suppose critical in the sense of the -- I'd have to read it and look at it.

THE COURT: Why don't you read it?

THE WITNESS: Yes, I really don't understand it. I am ready if you are.

BY MS.DuBOIS:

Q Well, as I read the testimony the implication, sir, is that what you were saying was that you had decided to continue the absolute exclusion of former addicts not only from the bus driver position, but from whatever other positions might fit within something called the critical pattern and what I'm trying to find out is what other positions might fit into the critical pattern.

A Well, the particular question was about the bus driver who had ten years, and the issue before -- the question that we were deciding was would we take this man, and I said that we would not take this man, and in the critical pattern would mean jobs of that type.

Q What would jobs of that type include?

THE COURT: What page are you --

MS. DuBOIS: 533.

THE WITNESS: 533.

THE COURT: I have got to take a short break for a minute, can you just hold it a minute

(Recess)

THE COURT: You may proceed. Are we back with the prior testimony still?

MS. DuBOIS: Yes, sir.

THE COURT: All right. At what page again?

MS. DuBOIS: 533.

THE COURT: All right, go ahead.

BY MS. DuBOIS:

Q What I was asking about, Mr. McLaren, was what titles other than bus driver you referred to when you said that you would not consider people in the critical pattern?

A There's a specific answer to that question. If you will look underneath where I made the point in the critical pattern his Honor said, in the bus operator pattern? And I replied in the bus operator pattern.

Q Does that mean that when you use generally the phrase critical pattern, or critical jobs that you are referring only to bus drivers?

A No.

Q Because you have used that phrase in the past

in this case.

A Right.

Q To refer to a series of job titles.

A I said, I believe I described them as operating titles.

Q There is testimony relating to the alcoholic policy and to decisions about which kind of titles there ought to be, physicals which I believe you used the phrase critical --

A Yes.

Q -- to describe categories of jobs.

A Yes.

Q How do you generally use the phrase critical?

A Operator. For instance the periods, the physical, the examinations are given on a periodic basis and they are given to those titles that are involved in the operation of vehicles or in the areas such as the track areas and power, things of that --

Q They are given, as I understand it, to tower men and dispatchers?

A Conductors, motormen.

Q Conductors every five years --

A Bus operators.

Q And bus operators, and that's all,right?

A Well, I can't tell you all of them. There is a number of titles that fall in that particular area.

Q I think it is only those five, but in any event, it is a stipulated fact in the case, but when you use the word critical pattern here, however, you are referring only to bus drivers?

A That's what the discussion was about, yes.

Q You testified today that this issue at least as to the particular applicant for a bus driver's position with the ten-year old edition history, this issue was still being considered by the Transit Authority and that Dr. Trigg had been asked to submit and had in fact submitted a recommendation regarding the employment of that bus driver; is that correct?

A No.

Q No?

A I said he submitted a-- he made a psychiatric examination and a drug evaluation, an analysis.

Q When you say drug evaluation, what kind of evaluation was he asked to make?

A Whether he is a user of drugs.

Q A present user?

A Well, we knew he had been a past user. He had admitted that. He was asked to evaluate the man in

use of drugs.

Q Was Dr.Trigg asked to make the usual evaluation that he makes for all applicants or employees who have drug problems who the Transit Authority now sends to him on a regular basis, or was he asked to make some particular kind of recommendation that had something particular to do with the Transit Authority's present consideration of this policy?

A No, we send basically two types of --

Q I asked one or the other, so I don't know which the "No" refers to. In other words, I asked --

A I said he made the normal type examination, but we make two types of requests, and one request is a straight drug, and sometimes we make a request of drug and psychiatric.

Q So he was solely asked as to whether present drug use, as far as the drug evaluation it was solely as to present drug use, not as to whether his drug history had any relevance to his employability?

A Well, we asked him to make an evaluation of the man's -- whether he's a user and whether he's -- the question of employability, let me put it this way, most of our consultants are reticent to say yes, this man is employable or not. That is our responsibility to determine

whether a man is employable. If we lay off on our doctors the employability, why, we are ducking our responsibility.

So if something happens we say, well, it wasn't our fault, it was Dr. Trigg's. But we don't do business that way. So what Dr. Trigg does, he makes an evaluation of the man, as to his drug use, history, plus his, in this case, psychiatric, and he gives the information to us and then we use it.

Now, if I have trouble interpreting I go to our doctor and say, doctor, what does this mean? And he might even call Dr. Trigg, because I don't feel I am competent.

Q But the drug evaluation isn't tailored to Transit Authority employment particularly, it's just a question of drug use?

A Well, I am sure, again I can only say in putting myself in Dr. Trigg's position, which I can't, he must consider the source of the referral, yes, but he's making a drug evaluation.

Q And the psychiatric evaluation, what is the purpose of that

A Well, the purpose is to determine the man's stability.

Q Do you ask Dr. Trigg to tailor that in any way to employability with the Transit Authority?

A Yes.

Q You do?

A Yes. We give, many employees or applicants are given psychiatric evaluation.

Q Does the psychiatric evaluation then take the form of indicating whether or not in Dr. Trigg's professional opinion the employee is from a psychiatric point of view employable or suitable for employment by the Transit Authority?

A Yes, he could state that his disability, for instance for police, would not be able to perform that type of work. He has to consider the type of work we are talking about.

Q What was the substance of Dr. Trigg's recommendation?

A He feels that the man was drug free. that the man was telling the truth and, secondly, he is stable.

MS. DuBOIS: Your Honor, we would like to request the production of Dr. Trigg's report to the Transit Authority and any later memoranda or reports he may have made regarding this applicant.

THE COURT: Well, what does the Transit Authority have to say about that?

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MR. DUNN: I'm not sure we heard the question, your Honor. In fact, your Honor, we are having a great deal of difficulty hearing--

THE COURT: Just repeat that, Mr. Dunn.

MR. DUNN: I was going to ask the court to request Ms. DuBois stand back so that we can hear better.

MS. DuBOIS: Can I do it this way, because I want to refer to things.

THE COURT: Yes. Your request was for things submitted by Dr. Trigg to the Transit Authority in connection with this bus driver applicant.

MR. SUMMERS: Well, we object to that, your Honor, on the grounds that it is a privileged communication to the Authority and the matters under consideration, I don't think it should be produced for the inspection of plaintiff's counsel.

THE COURT: I would not --

MS. DuBOIS: Your Honor, as far as any personal privilege we'll be glad to have any identifying information eliminated. It seems to me that it's the only indication that we have today that the Transit Authority has taken into consideration, or appears to be now, any medical recommendation with respect to anyone regarding its drug policy. It seems to me relevant to the case.

THE COURT: Well, I think there is a personal element here, and unless it were arranged to have this man release the material I wouldn't ask that that be produced,

and I don't think we are even going to --

MS. DuBOIS: We could eliminate all names and be under court order to --

THE COURT: I don't think that is satisfactory. The fact is that Mr. McLaren has testified that Dr. Trigg has found this man drug free and available, and you have brought out that the finding of psychiatric stability is in the context of employment as a bus driver.

Now I don't really know how much more you can add to that. That's in the record now.

MS. DuBOIS: Because there might well be a finding as to whether or not the fact of his prior addiction -- I assume they would be negative findings, but they might be findings that Dr. Trigg made as to the fact that his prior addiction left him with neither psychiatric nor physical problems.

THE COURT: You haven't even called Dr. Trigg. Now Dr. Trigg could have been a helpful witness to the plaintiff, it seems to me. I was rather expecting him to be called. And he could give directly his analysis of the employability of past drug addicts, or present methadon patients in Transit Authority jobs.

Now to have Dr. Trigg's opinions come in here in this kind of backhanded way is not very satisfactory to

me in any event, and I have a general statement which has some value, I suppose, but to me there is no use having the one isolated analysis of Dr. Trigg of a specific individual. There are problems, I think, about that privacy there and, furthermore, just repeating what I said this is not a very good substitute for Dr. Trigg's testimony.

MS. DuBOIS: Your Honor, you may recall that in Dr. Trigg's deposition plaintiffs attempted to get testimony from Dr. Trigg with respect to his opinion as to the employability of plaintiff's class. We had a conference with the court at which the court ruled that plaintiffs were not entitled to make such inquiries. That in fact we were trying to use him as our expert, and we could not ask such questions. We tried to ask such questions in his deposition. That is what seems to me --

THE COURT: Well, you have really got me on that one. Who has his deposition? I really can't conceive--

MS. DuBOIS: Well, the deposition will show, the transcript of the conference would, we have two depositions, because in the midst of it we had to come down, but I can show -- well, it would show, because the first deposition we attempted to ask such questions.

THE COURT: Well, maybe the best thing to do is to--

MS. DuBOIS: It seems to me this might be a

shortcut to our having to call Dr. Trigg. I believe those are the two depositions(handing).

Do you want me to try to find the relevant parts, your Honor?

THE COURT: Have you introduced Dr. Trigg's depositions into this case? Is it in evidence?

MR. SUMMERS: Portions of it have been read into evidence, your Honor.

MS. DuBOIS: I am not positive.

THE COURT: Is it one of the depositions -- I just don't recall.

MS. DuBOIS: I am just not positive of the answer, your Honor.

MR. SUMMERS: Portions of it have been read into evidence, your Honor.

MS. DuBOIS: Yes, portions of it have been. The portions marked have been.

THE COURT: Do the portions marked include material relating to the employability of methadone people or past heroin people with Transit Authority jobs?

MISS DuBOIS: No. We tried to elicit that in the first deposition, then had a conference with the Court and the Court ruled there is limited testimony on this point in that we did manage to elicit from Dr. Trigg that he had advised the Transit Authority that he felt some of his methadone maintained patients could be or should be or were employable and that the Transit Authority should consider employing them and we were allowed to ask him only about that, but we were not allowed to ask him his views as to employability of methadone maintained persons.

THE COURT: I may be completely inconsistent with something I did in the past, but frankly after going over the pretrial materials right before trial, I saw that Dr. Trigg had offered to certify certain people to the Transit Authority and, I don't remember the details, but that would have something to do with their employability. Dr. Trigg obviously wasn't undertaking to put himself in the employer's shoes but he was offering to do something to give comfort to the Transit Authority, as to his opinion of their employability.

As I finally understood it, and maybe I should

have understood it all along, he was more than just a paid expert. He was a fact witness, and he had had considerable association with the Transit Authority; he understood their employment problems as Mr. McLaren had just indicated, and he had certain views.

Now, if I foreclosed you, what do we do? I just am reluctant to permit a personal psychiatric analysis of somebody who has not specifically joined in this case. That prevents considerable problems. I can see its value, but it seems to me the real value, and if we need to remedy it, we can, and if it means reversing it, reversing something in the past it can get reversed, but it seems to me it is possible Dr. Trigg's views would be of assistance to me.

MISS DuBOIS: One possibility would be to call him as a Court's witness. He was totally uncooperative in the deposition and he is paid consultant to the Transit Authority. That's why we helped to explore his views and couldn't.

THE COURT: If he was cooperative and you don't want to call him, that's up to you.

MISS DuBOIS: But I think hsi testimony might be relevant and perhaps he should be a Court's witness. Our feeling was, at least this document would contain some-

thing of relevance and --

THE COURT: I do think Dr. Trigg is in a key position, and in this case as in other cases, I am not going to try to reconstruct the discovery history. I'm sure there were considerations at that time but we are now at the trial. If there is a report by Dr. Trigg indicating stability of a past heroin addict for employment on the Transit Authority, that is directly relevant to the case. After all, so far we have had a lot of expert testimony about general views of methadone people. Here is a man who has focused on the problem more directly with respect to the Transit Authority than the other experts have. So, if he has a report, this is important.

I think what I will do is to ask the Transit Authority to provide me with that. I will look at it in camera and see whether I think the substance of it should be made available or something else.

MR. SUMMERS: The substance has been testified to.

THE COURT: The Transit Authority is to produce the report to me in camera and we will see what should be done.

MR. SUMMERS: May I ask your Honor, not getting back to the history of the litigation but Dr. Trigg put

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an unequivocal position he was not asked nor did he furnish to the Authority any opinions regarding the employability of any particular person. He said on some occasions he thought maybe I can get some of my own people in here, and needled the Authority, why don't you take a few a month, that sort of attitude, but he took a position his value to the Authority is nil.

THE COURT: According to the testimony of Mr. McLaren, since the time of that testimony by Dr. Trigg, a somewhat different kind of report has been rendered, so we have a new development and it could be an important development. I don't know without seeing it. So, please produce it.

MR. SUMMERS: Your Honor, I am talking about the history of this which I don't think has been gotten over clearly from what Miss DuBois said.

BY MISS DuBOIS:

Q Mr. McLaren, I would like to turn to the testimony you gave in connection with the 12-page chart. You testified that a lot of the Transit Authority's equipment was relatively old and some of the chart indicates the age. I just wanted to ask a couple of questions related to that, which are also related to the two that the parties made of the Transit Authority.

We were told on the two that while there was a difference between the old subway cars and the new subway cars and the equipment, for example, that the motorman uses, that the safety related equipm ent, in particular the dead man device that the motorman uses, was essentially the same on the old cars as the new cars.

Is that correct?

A I don't think I testified to equipment.

Q I didn't mean to say you told us this.

THE COURT: You don't have to have these long introductions, Miss DuBois. Just ask your question.

What is your question?

Q Is the dead man device and other safety related devices on the new subway cars essentially the same as they are on the old subway cars or is there a significant difference with respect to the passenger safety?

A I would rather have you ask that of an operating man. I did not testify to that. I talked about the structure. I said --

THE COURT: The answer is you don't know.

THE WITNESS: I don't know.

Q Then what was the significance of your testimony about the age of the Transit Authority?

A I was talking about the tunnels, the station, and

the building of it, still on the same roadbed, all this sort of thing. The system was laid down in 1904.

THE COURT: He said it is old equipment.

MISS DuBOIS: I thought he may have had a further implication other than that.

THE COURT: What is your next question?

Q On page 2 of the chart, it gives a figure of 76 per cent for the per cent of hourly employees working at least part of duty tour, nights, Saturdays or Sundays.

Do you know the figure for other than hourly employees?

A For the manual group of operating supervisors, it would be pretty much the same, but for the professional, clerical, I do not have it. Basically most of those, but not all, work during the day hours. Not the police, of course.

Q Is the same true with regard to per cent of hourly employees requiring replacement? In other words, is that figure of 77 per cent one that relates to that group but it would be significantly lower for non-hourly employees?

A It would relate to the hourly group and the operating supervisors and the police as well as some of the key people in the career salary, professionals, and

so forth. My secretary, for example. This would be more widespread, much more widespread.

Q What does this mean by per cent of hourly employees working without direct supervision? What titles are included to come up to that 67 per cent figure?

Q In some cases it would include almost all people, such as bus operator. In other cases it would be a substantial group, say, for instance, the signal repair people. A large percentage of those are off by themselves, patroling areas and doing preventative maintenance or taking care of a certain assignment. In other areas, like trackmen, they also patrol but they may work in a track gang. It breaks down to various categories.

Q What are all the titles that are included?

A I would say that almost all of our titles, a portion all the way from a sizable percentage to -- they would fall in that category, like car cleaners. Most of them work on their own and the men would fall under the traditional type of supervision are those in shops. Most of the rest work on the property, in small groups or individually, singularly, run a bus or train or a fare booth or something of that nature.

Q I am asking the same question again, and you still haven't answered my question.

Can you give me the names of all the titles which were used to make up those figures?

A We used all of our titles and looked at the assignments of the people within those titles.

Q Was this study done particularly for this litigation?

A No.

Q What was it done for?

A The question of direct supervision?

Q Do you have a study on direct supervision?

MR. DUNN: Your Honor, I strenuously object to counsel interrupting the witness. Counsel interrupts when the answer is not --

THE COURT: What's the question?

Q Do you have a study of direct supervision or --

A It's like the A, B, C's. In directing the work force you have to know --

Q These are exact figures, 67 per cent and 76 per cent. You told me, as I understood you, somebody had looked at each title and decided some number of bus operators and some number of car cleaners fit into this. I can't tell from your testimony, or it seems to me it's taking a long time --

THE COURT: We don't have to have speeches.

What is the question?

Q I want to know if there is some document, some study, some piece of paper this was based on, or --

A I have used the figures a number of times. I have used it in union negotiations.

Q What do you base it on?

A A study.

Q A physical study, written study?

A We know where our people are assigned, what kind of jobs are assigned.

Q Do you have a written study or a report to you that gives you these figures?

A I asked my people to get it but it's readily available. It's the kind of study that's basically to our operation. We have it. It's been in existence for many years. I can't tell you when it started, but it is just one of those commonsense documents that all people have.

Q Could we have a copy of the document?

A It's just an accumulation of figures. I can show you a document that I presented to the union in union negotiations two, three, maybe four years ago.

THE COURT: Mr. Summers, what Miss DuBois wants is the basis for the 67 per cent and 76 per cent. Somebody

at some point must have gathered some figures and come up with 67 per cent versus 54 per cent. I assume that the Transit Authority has that and there is no use wasting Mr. Laren's time.

Why don't you get that for us.

MR. SUMMERS: There is raw material for everything, every figure in this whole thing. I can fill the courtroom with documents, your Honor.

THE COURT: She is not asking that. You are the only one that suggested that so far. There is only one thing she is asking.

MR. SUMMERS: If she gets that, she will think of a million others.

THE WITNESS: It's a simple thing to get and explain how we got it and the source material. No problem.

THE COURT: What else?

Q On page 3 of the chart, I would like to focus for a minute on the passenger fatalities. It says, as I understand it, it is 207 hit by a train.

What is the total figure for total passenger fatalities?

A This is it. 92 were dead on arrival and others were reported by our Compensation Bureau.

Q All passenger fatalities are as a result of being

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hit by a train?

A Surface had 17. These were buses.

THE COURT: I thought you told me that the only people who died were 92.

THE WITNESS: 92 were dead on arrival, 207 were killed. I don't know what happened to the remainder. That's all I can tell you.

Q But you say there were no other passenger fatalities than those?

A Not that we know of. This is all we have.

Q Do your reports give a breakdown as to what the cause of the different fatalities was?

A These were hit by a train.

Q Let me clarify the question.

Do your reports show the number of fatalities caused by employee malfunctioning or misconduct as compared to the number caused by, for example, the things you listed, suicide, murders?

A Our reports show what we consider the reason for the accidents, and we handled this in the past year, 6152 and we categorized each of the accidents, why it happened.

On fatality we have a study and explain the reason.

Q On the study of fatalitities what number of

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the 207 were caused by employee malfunctioning of some kind?

A I don't have that with me.

Q Do youhave a report that shows that?

A We have a report that covers every accident we have here.

MISS DuBOIS: May we have a copy of that report, your Honor? That's one of the things we asked for previously.

THE COURT: I think you are saying there is an individual report for each accident.

THE WITNESS: Yes, but it's compiled in the yearly report. It's broken down, for instance, to on-board accident, boarding accidents and --

THE COURT: What Miss DuBois wants, and I think this is of interest now, how many of these incidents you have ascribed to employee failure versus somebody being drunk and falling off a platform, somebody being pushed off the platform by his girl friend or something like that.

THE WITNESS: By the way, there are very few of those.

THE COURT: That's what she is interested in.

THE WITNESS: We have very reliable people and hope to keep it that way.

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Q What I would like is any report you have that breaks down passenger fatalities and passenger accidents, giving indications of the reason for.

A Well, passenger accicents, I don't think I can do that. But, fatalities, yes. Let's take passenger accidents and I'll explain why.

For instance --

Q Fatalities you can. There is a document that gives that information.

A We have a list of the fatalities and how it happened.

THE COURT: That will be produced.

Obviously the passenger accidents are vastly greater in number, and can go, I guess, from trivia to something major.

THE WITNESS: Yes.

THE COURT: Anything else?

Q On passenger accidents, you say they can go from trivia. What kind of trivia are included in the passenger accidents?

A Well, let's take an example of what we call an accident.

For instance, a train comes into the station, and it's coming in too fast and has to jam on its brakes, people

are standing in the car and are shaken up. That's one example.

A person is caught getting in or stumbles. People for instance would have an umbrella and they turn around and cut another person.

Q I'm sorry to interrupt you, but maybe it would speed it up.

Is there a definition of accident that you used for purposes of compiling this study?

A These follow a standard formula in categorizing the type of accidents that we used to report to the National Safety Council. Frankly, rather than to get into it, get into it this way I think we can show you the report which will probably answer your questions.

Q That report would have a definition of accident, the same definition you used?

A It will give you the type of accidents we have. I think you can tell by looking at that what could be caused by an employee and what would not be caused by an employee.

Q Employee fatalities.

I would like to ask the same questions I asked about passenger fatalities.

Do you have a report or document of some kind that gives you abreakdown of employee fatalities and what

the cause is?

A We can show you the breakdown, the number of employees, their titles and basically how it happened, yes.

MR. SUMMERS: Your Honor, I don't know whether or not all of this is in one document or whether we have to go scrounging around and locate those things, all around the system. If it's in one document, fine, but if it isn't, I am objecting to the imposition.

THE COURT: Mr. Summers, you have produced this material and you have put it on in your case, and the plaintiffs have a right to probe it within reason and what we have arrived at so far I think is quite simple. There is probably one document which analyzes the passenger fatalities.

There is one report to the Safety Council which will analyze the passenger accidents. There is, hopefully, one document or a few documents which will briefly state the causes of the very few employee fatalities over an almost 30-year period. It's only 194 fatalities. I don't think we're really asking for the backup of each incident or Miss DuBois isn't. This is my memory of how it stands right now and I think it's perfectly manageable.

Go ahead.

Q Mr. McLaren, as to the definition of employee lost time accidents and employee accidents, would we also find that in the safety report you mentioned?

A The definition?

Q Yes. In other words, passenger accidents, with respect to employees accicents, at least I would like to have a definition.

A I can give you the same kind of report that goes to the National Safety Council.

THE COURT: On the employees?

THE WITNESS: On the employees, yes.

Q Mr. McLaren, you mentioned in connection with the passenger fatalities or passenger accidents you listed a series of causes in the middle of which you included addicts. What was the meaning of that? Did you mean ddicts as passengers?

A Where are you referring to?

Q I am referring to your testimony earlier today.

A What page?

Q It is not in the transcript. It's your testimony today, sir.

A I did refer to the section under "Hazards". We were speaking about passenger accidents and I listed a number of reasons why we have passenger accidents.

I said boarding, on-board between cars, falling under trains, fire, smoke, crime, drinking, drug, vandalism. That's under "Rapid Transportation" and transportation stations, and in the Surface Transportation.

Q What is your meaning of that phrase in there? What does "drugs" mean?

A It means people under the influence of drugs could commit crimes, bodily harm, fall off a train, fall between trains and do all sorts of other things.

Q Are the figures for '73 to '74, the accident figures, substantially the same as the figures for '72 to '73?

A Which ones are you speaking of?

Q In other words, what you have given us in this chart is the figures for '73 to '74.

A If you may note, on '73 -- let me attack that by the categories we're talking about.

On employee accidents we have had an increase. I think it's 14, 15 per cent or so. Our record has worsened.

On passenger accidents, it has improved. And, I'm not sure about traffic. I think that has improved slightly. But, year to year is not a particularly good comparison. We look at the trends. We are

alarmed by the employee increase because that's rather substantial. Especially severity has had a substantial increase. We have had four deaths this year so far.

THE COURT: Employees?

THE WITNESS: Yes.

THE COURT: In what, calendar '74?

THE WITNESS: Yes. This, by the way, I would gather would be more than probably all the other City departments except probably police and fire. All of them combined except police and fire.

Q On page 4, you list 271 station booths part-time operation. What hours does that mean approximately?

A They correlate with the peak hours as outlined. They would be in major stations like Grand Central, Penn Station, and so forth.

Q The next line, station booth robberies, 1049.

What do you mean by robberies? Would those include any employees stealing, for example, by railroad clerks or are those robberies by outsiders?

A Well, they are outsiders. We have had instances where a Maverick police or railroad clerk, where they have been stealing too, but that's isolated.

Q But the 1049 are outsiders?

A Yes, most of them, the police say are addicts

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and very young people on drugs.

Q Can you explain to me what a remote control control tower is?

A Unmanned.

Q And it is controlled from another tower?

A Electronically, yes.

Q On page 7 it states that of the 42 industries reporting in 1973, the transit industry reported the second highest accident frequency rate.

Do you inow what the transit industry is as by the National Safety Council to include? Is it, for example, limited to subway systems or does it include railway systems of any kind?

A Our safety director is here. I think you better ask him that. I have my opinion, but I think you will get more from him.

Q Is the New York City Transit Authority's accident frequency rate comparable to the National Transit Industry's rate?

A Our frequency rate is lower and our severity is higher.

Q Do you have any way of measuring or indicating the extent to which one is lower and the other higher?

A Yes, we have that.

Q What would those --

A I don't have that here, but our safety director does. I point out to you we have an exceptional safety record for our employees. We have won the National Award of Honor in '72 and Award of Merit in 1973.

Q What would those awards be based on, and what do you mean by exceptional safety rate for your employees?

A They're based on improvement and performance, reducing your rate.

Q When you say you have an exceptional safety rate, do you mean by some objective standard as compared to other Transit Authorities?

A Any way you want to compare it we have a very fine record. We have a very exceptional program of safety record and, of course, we have very responsible employees.

Q Why would your accident severity rate be higher than the National Safety average?

A Excuse me?

Q I thought you stated that the City Transit Authority's accident severity rate was higher than the National average.

A Higher than the Transit average.

Q Of the Transit industry?

A Yes.

Q Why?

A Because we had four people killed this year.

Q Why do you say simultaneously that you have an exceptional good safety record for employees?

A Well, because looking at the long range that we do year after year, we do very well. I said this year we had had a slip in the severity and in fact the frequency has increased, too. It's a bad year.

Q Are you saying then that your rate is not higher, your severity rate is not higher if you look at the overall trend but only if you look at this year?

A We're getting into an area, an area that maybe I have to do some explaining. When we talk about averages, we speak about across the board and we throw in all titles, all occupations. On that basis, we have a better record than the National Transit industry does. We also have a better passenger record. We also have higher standards. We have higher requirements, qualifications. We have more strict adherance to rules, we have better management and we have excellent employees and we obtain these in New York City through our qualification procedure.

Now, we have worked very hard to obtain that.

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There was a time that this Authority had year after year seven, eight, six, five, as much as ten, twelve people killed a year. We have had that reduced for a long period of time to around two or three. We have had a bad year. We have had two people just recently killed walking down the track together.

THE COURT: Employees?

THE WITNESS: Employees, yes.

A (Continuing) We worked very hard and we're very proud of this but we're not proud when people are killed. We're just simply calling to your attention, we work in a very dangerous industry. We work very hard to keep ahead of the industry and intend to keep ahead of the industry.

Now, the real key though to your hazards is what happens in the dangerous or critical areas. When we look at maintenance, away, or the power department --

Q I don't want to cut you off, but I think it may be --

MR. DUNN: The witness is being cut off, your Honor.

THE COURT: He is explaining something beyond the question.

Go ahead.

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Q This chart on page 7 states that these booth robberies, assaults, et cetera, are not included in the TA accident frequency and severity rate for '73 and '74, and the implication of your testimony is -- what I want to understand is was the implication of your testimony and the inclusion of this in the chart that somehow -- what is the implication of this?

A The implication is that New York City is unique in this sense. That in talking to our people in the transit industry such as last week, we do not find this sort of activity. They don't have to come to grips with this, and this is an additional hazard for our employees and our passengers.

Q Excuse me, what sort of activities, the robberies?

A The robberies, the suicides, people jumping in front of trains and the activity of our police and our property. I think we have the eighth largest police force in the United States and this is as many summonses and so forth as they do in other major cities. We have a very difficult problem.

Q Are you saying other Transit Authorities don't have the problems of people being struck on the track by trains?

A Not to the degree that we do. You know,

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San Francisco, the fashion for suicides there is to jump off the Golden Gate Bridge.

In New York City, they jump in front of a train. I don't know why they do that. They used to jump off the Brooklyn Bridge. This is a very dramatic experience. The motorman sees this person in the window jumping in front of him.

Q Do you have any documentary basis for the statement you made in your testimony that other Transit Authorities don't have the same problem or is that your impression based on --

A The last time I asked it was last week at the annual conference of the personnel, labor relations, in San Francisco, and we discussed this whole problem of drugs, whether they are hiring people with methadone background, drug background, the robberies and the suicides and things of that nature.

Well, the answer is none of them have it to the degree we have it. However, there are a couple of drug centers in the United States. One is San Francisco and one here.

Q In San Francisco you asked whether they hired former drug abusers and whether they had a drug problem?

A We talked about this whole thing.

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Q Did you ask about the Bart system?

A I had the pleasure of writing on it. Unfortunately it was out of commission on that day.

Q Did you ask whether they employ people who --

A No, they're intercity.

Q Did you discovery at that conference any Transit Authorities which did hire former addicts?

A No, I did not find any.

THE COURT: Any who what?

THE WITNESS: Any who hired.

THE COURT: Hired methadone people?

THE WITNESS: Or any so-called drug therapy people.

THE COURT: What about past drug people?

THE WITNESS: They did not hire anyone in that category.

THE COURT: Who would these people be, what cities?

THE WITNESS: Philadelphia, Boston and Seattle, Los Angeles, New Orleans, St. Louis.

THE COURT: Is there in the record now material about whether or not the other major transit systems hire or do not hire methadone patients?

MISS DuBOIS: No, sir, but I would like to have

one more question on that.

Q Whether or not Bart was represented In that conference, isn't it a fact they do hire methadone and former --

A I don't know. I would be surprised.

THE COURT: Boston has a subway system, doesn't it?

THE WITNESS: Yes.

THE COURT: Do you know what policy Boston has, that the Boston operators of the subway and bus system have as far as the questions that we are concerned with here?

THE WITNESS: I know of none that have problems in New York City.

THE COURT: That isn't my question.

THE WITNESS: Let me go on.

Secondly, I know of none that are in any sort of a program that hrie drug users.

THE COURT: I am not asking about a program. Let's take Boston.

Do you know whether the authorities that operate their transportation up there, do they have a blanket policy excluding the methadone people and the past heroin people?

THE WITNESSS: At this conference I asked the

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question. I explained our problem. I asked if anyone hired people who were drug users, methadone, et cetera, and no one signified they did and there was a general no.

THE COURT: Did your question cover the kind of feller who says he has had a past heroin or drug situation, but he says he has been off it?

THE WITNESS: No.

THE COURT: Who was represented at this meeting?

THE WITNESS: I mentioned the cities, several cities and I don't know if all of them were there at the time. This is an annual conference which occurs.

BY MISS DuBOIS:

Q The question was did you ask whether any of these agencies represented had an absolute rule excluding, first, all former addicts?

A They not only excluded them, but they discharged them, according to what they told me.

Q Who exactly told you that?

A The people at this conference.

THE COURT: He is not quite sure who was present.

THE WITNESS: I have a list of people.

THE COURT: I thought there was something in the record about what other cities were doing.

MISS DuBOIS: No.

THE COURT: Can we get that?

MR. SUMMERS: The Transit System.

THE COURT: I'm not talking about the cities, I am talking about the Boston, whatever they call it up there, the MTA.

MS. DuBOIS: If we could get process to California we could bring in somebody from BART.

THE COURT: Isn't it easily ascertainable?

MS. DuBOIS: I think we could get their policy, but--

MR. MORRILL: Your Honor, I had extensive discussions with people from BART in San Francisco, and they said they did not want to appear voluntarily, but they do have a system of individual consideration and they have had an enormous amount of success with it. As I said--

THE COURT: Is there any other city that has that?

MR. MORRILL: I don't know of any. I did speak to an individual in Boston who told me that he did not-- they did not have an exclusion. This was, I believe, a person from the union in Boston, that they did not have an exclusion. He felt that there were people there, but that they didn't inquire into it and that he didn't really know very much, but that he --

THE COURT: How do you say BART has enormous success?

They're hardly off the ground.

MR. MORRILL: They have been running trains for about a year now, your Honor.

THE COURT: I spent quite a bit of time in San Francisco and I can tell you something more about BART than you probably know. I mean, the methadone people have not caused BART's problems, but it really hasn't run essentially. There are some trains running in some areas, but it doesn't run under the bay, you know, and it's got a very short record.

MR. MORRILL: I realize that, your Honor, but I did want to mention that I know that they do have that policy.

THE COURT: All right.

MR. MORRILL: The only other discussion that I recall was a confidential discussion with somebody in Chicago who said that -- and this was purely hearsay, he was fairly sure that there were people in the Chicago system, but he didn't have any specifics.

THE COURT: All right, we will leave that.

Is there anything else?

MS. DuBOIS: Yes.

THE COURT: All right.

BY MS. DuBOIS:

Q Mr. McLaren, you mentioned, and it is set forth here, the National Safety Council's report. Are you familiar with the Bureau of Labor Statistics of the U.S. Department of Labor's report on the results of their 1972 survey of occupational injuries and illnesses?

A Well, I know of the study, but I don't know of that report.

Q You know of the study but you haven't seen the report?

A Well, I see their report, but I don't know if I have seen that report. You have to refresh my memory.

Q I will show it to you (handing).

A You showed it before to me?

Q No, I said I can show it to you.

A All right. What about it?

Q Did you look at the report--

MR. DUNN: May we have a copy of that, Ms. DuBois?

MS. DuBOIS: I only have one copy.

MR. DUNN: May we also have that marked for identification if the witness is examining it, please.

THE COURT: All right.

MS. DuBOIS: I ask that this be marked as Plaintiffs' Exhibit 47 for identification.

(Plaintiffs' Exhibit 47 marked for identification.)

xx

THE COURT: What is this, Ms. DuBois?

MS. DuBOIS: This is the Bureau of Labor Statistics for court on occupational injuries and illnesses. It's a report of a survey conducted in 1972. It's a survey. They are responsible, BLS is responsible for record keeping under the Occupational Safety and Hazard Act of 1970, and I understand they keep copies on a regular basis.

THE COURT: What is your question?

Q Are you aware that the incidence rate, accident incidence rate for transportation in public utilities listed there is 10.8 which compares rather favorably to the other major categories of industry reported therein, such as construction, which is 19.0, roofing and sheet metal work --

THE COURT: If you want to put this in, why don't you put it in?

MS. DuBOIS: All right, I will offer it in evidence.

THE WITNESS: Well, we are not in the transportation industry.

Q Transit is, I believe, included within transportation.

THE COURT: If you want to offer it, see if they object to it.

MS. DuBOIS: I would like to offer it.

THE COURT: Is there any objection?

MR. DUNN: May we look at it? You know, during the last recess we asked if any documents were going to be offered--

THE COURT: Well, no one knew about that kind of thing. Just look at it and see if you object.

MR. SUMMERS: Your Honor, we don't object to it.

THE COURT: All right, received.

xx (Plaintiffs' Exhibit 47 received in evidence.)

MS. DuBOIS: Your Honor, I am not going to ask any questions about it, but we can discuss its significance in a brief. It simply has a different rating of Transit Authority than the particular report Mr. McLaren testified about.

THE COURT: All right. Are there any further questions?

Q Are you aware of any other national reports on the safety sensitivity of different industries such as these two?

A I think the FRA testified recently at the city agency that they had not finished with their standards for the transit industry. So we know no other valid statistical basis for making a report, other than the National Safety

Council.

Q On page 8 -- I'm sorry.

MS. DuBOIS: This goes back a bit, your Honor, but I would like to askwhether category A, since it is broken down here into these various sub-categories, whether the Transit Authority doesn't have -- I'll ask Mr. McLaren whether the Transit Authority doesn't have some report which breaks the figures, the statistics, down between these different categories also and which defines the -- the second question would be, which defines the meaning of each of those categories.

THE COURT: You know, this is not helping at all. I'm not trying as such a case about the types of accidents. It's of interest, it's relevant, but I don't have to have every last detail about the --

MS. DuBOIS: Your Honor, I don't think it is a last detail. If they are claiming that passenger accidents are significant, they give figures and they give a variety of categories which aren't self-defining, it seems to me relevant whether 1 per cent, 2 per cent or 90 per cent of those passenger accidents are caused by passengers or are caused by TA employees.

This is supposed to be relevant to the safe--

THE COURT: Well, they will give you the report to

the National Safety Council, and it may be possible from that to arrive more at what you're seeking. But I would suggest waiting to see that.

MS. DuBOIS: I wasn't sure whether it was--

Q Mr. McLaren, is there a report you submit to the National Safety Council?

A Yes, we have an annual report, and I'll give you the annual report.

Q That is what they base their statistics on?

A Well, we base our -- well, yes. Yes. Right.

THE COURT: Didn't you have a collision or a derailment recently?

THE WITNESS: Yes, we had a derailment.

THE COURT: What was that?

THE WITNESS: I wasn't here at the time, but as I understand it it had to do with an employee who failed to operate a mechanism.

THE COURT: Where did that occur?

THE WITNESS: I was gone at the time. I know it was on a switch. That occurred on a switch, and then then then, the front wheels I guess turned that way (indicating) and the back wheels went that way (indicating), and the result is that it ran into a--

THE COURT: So who failed to do what?

THE WITNESS: A maintenance of way employee failed to carry out his duties. Apparently he had something to do with the switch. It was a manual switch.

THE COURT: The switch didn't work?

THE WITNESS: It was a manual switch.

THE COURT: And he caused a derailment?

THE WITNESS: Right. He caused a derailment. He should have known it, which he didn't. It was last week, I had a short phone call on it.

THE COURT: All right.

BY MS. DuBOIS:

Q On charts 10 and 11, what is the basis by which determination as to which job titles would be entry level and which job titles are entry and promotional was made?

b2 A Civil Service.

THE COURT: What difference does it make? Ms. DuBois, I don't think we're getting anywhere. We can spin this out for a long time, but to me it has got to have a point to this case, and I haven't heard much this afternoon that has a point to this case. You know, there are lots of things we know. I know that there is danger in the system and I don't have to have it gone into just hour after hour. There is a certain amount of utility in the specifics, but there is an end to it.

Q I would like to explore briefly, Mr. McLaren, your rationale or the Transit Authority's drug policy. You testified previously at this trial without regard to efforts to establish a system of certification which would certify that drug addicts had been rehabilitated.

THE COURT: At what page?

MS. DuBOIS: 511 to 512.

Q My question is: Is the lack of such a system a reason for the drug policy?

A My rationale falls in several categories. One of them was that. And I explained this morning --

Q But on that I would like to just focus. Had such a certification system been developed do you think the Transit Authority should have considered --

MR. DUNN: I object to the question, your Honor.

Q What is the relevance of a certification system in your view to the Transit Authority drug policy?

MR. DUNN: I didn't hear the question.

Q What is the relevance of a certification system?

MR. DUNN: To what?

Q To the rationality of the Transit Authority's drug policy.

MR. SUMMERS: Your Honor, I'm not sure I understand what she is driving at. Maybe the witness does, but I don't.

THE COURT: I will sustain the objection. Let's look at his testimony and see if we can't get a question with some point.

MS. DuBOIS: His testimony was that the lack of such a system was reason for the drug policy, and I want to know why. It's the testimony at page 552.

THE COURT: I was looking at 511.

MS. DuBOIS: Right, there's the testimony of 511, the initial testimony, and at 552 I think he, in summing up his reasons, he states that the --

THE COURT: The lack of any certification program.

MS. DuBOIS: Right. What I want to know is why that's a rationale in his view.

THE COURT: Isn't that obvious? In other words, you could have a system which would assure you of the employability of a man, I suppose that would help you; right?

THE WITNESS: Yes.

THE COURT: To me it's obvious. The reason. Now, there may be other questions, Ms. DuBois, but that is not anything to explain.

Q You testified, Mr. McLaren, also about the reliability of programs, problems with insuring, the rate of reliability. Have you spoken to anyone at the FDA or the Drug Abuse Control Commission who is responsible for

regulating methadone programs and insuring their compliance with regulations?

A I didn't understand the first part of the question.

Q You testified previously that you were concerned with -

THE COURT: You just confuse us. You do not have to have introductions. I think Mr. McLaren remembers his testimony reasonably well. I think I do.

Now the question is: Have you spoken to anyone at the FDA in an effort to evaluate the reliability of particular methadone programs?

THE WITNESS: No.

THE COURT: All right.

Q Have you spoken to anyone at the Drug Abuse Control Commission in the same connection? In an effort to evaluate the reliability of their regulations and also their views as to reliability of the programs they regulate, they evaluate?

A No, not on that subject.

THE COURT: What was the last agency?

MS. DuBOIS: The New York State Drug Abuse Control Commission, which is now primarily responsible for monitoring the programs compliance with --

THE COURT: All right. Next question.

Q You stated previously that--

THE COURT: Just ask your question.

Q In your previous conversations with Dr. Dole with regard to the Transit Authority's drug policy, didn't Dr. Dole offer to do studies comparable to those done by Dr. Gordon to demonstrate the performance capabilities of methadone maintained persons to demonstrate that they performed normally?

A Not that I recall. I did not speak to him alone. I spoke to him in a group.

Q Do you recall your conversation at the time you spoke to him in the group?

A No. The subject matter was the union and ourselves, and the subject matter was the question of obtaining a consultant who would be more acceptable to the parties than the one we had. And the union had picked out Dr. Dole as a starting point, a person to go to to obtain that advice.

Q Do you recall no conversation with Dr. Dole except that? Do you recall no conversation in which you discussed with him possible employment of methadone maintained persons?

A No, I do not.

MS. DuBOIS: Your Honor, I have a series of questions

about particular Transit Authority jobs, such as railroad porter, conductor, etc., but I don't know whether -- until I know what other witnesses the Transit Authority may call, whether Mr. McLaren is the best person to pursue this with or whether it would be a waste of time -- I mean, I think it would be a waste of time if they are planning to call certain other people.

THE COURT: Does the Transit Authority have people who are versed in specifics, specific jobs?

MR. SUMMERS: Well, they are available.

THE COURT: Don't you have the personnel director here?

MR. SUMMERS: Yes, he is here.

THE COURT: All right. I think the idea was Mr. McLaren would cover these charts and the general relationships, and then if there needed to be testimony about specific job categories, somebody else would do it; is that right?

MR. SUMMERS: Yes. Although he may be able to answer any questions put to him.

MS. DuBOIS: Well, maybe it would help to ask, what other testimony about the Transit Authority employment are the defendants planning to put on?

MR. SUMMERS: Well, we are responding to a

request by the court to produce evidence regarding the jobs and the authority, and Mr. McLaren has done that very comprehensively and we weren't planning to go into minute detail about everything, but if the court wishes it, or if counsel for the plaintiff desires it and asks for it, we will produce people who can give them minute testimony.

THE COURT: Well, you see, the continued emphasis, and I don't say it is unfair at all, but the continued emphasis is on the danger, the sensitivity area.

Now, I want to satisfy myself as to whether there are not other jobs which -- I keep referring to clerical jobs, where things are different. So instead of bothering McLaren any more it might be of some utility to have the personnel director or somebody.

MR. SUMMERS: Well, what category of jobs? I don't conceive that Ms. DuBois wants to put methadone patients operating trains. We don't need to know about a motorman's job. What jobs is she talking about? Or is the court interested in?

THE COURT: Well, didn't I just say I would like to see--

MR. SUMMERS: Clerical, yes, we have that.

THE COURT: It could be that the testimony by the personnel director, he was somebody suggested by Mr.

McLaren, it could be that the testimony of the personnel director could permit anybody who wants to do so to ask about specific categories. Now nobody is going to go through every category and ask slavishly about everything they do, but there may be some specific categories.

Can't we use the personnel director for that, whoever wants to ask questions?

MR. SUMMERS: He wouldn't be as well versed in all the operating positions, especially in Rapid Transit, he has come up through all the -- in the Rapid Transit we have people -- you know, if the need is to get specific, accurate, detailed information, we have the people and we would like to use these people whether the court wants them or Ms. DuBois wants them.

THE COURT: Well, I will start with myself. I think from the tour and from the testimony I have heard, and I guess maybe from just common sense, I have a fair idea now what a motorman does. I think I have been on buses and I have probably an idea what a bus driver does. I think that the tower man, the conductor, station clerk, the fellow who comes around and helps and goes from station to station and cleans up, whatever they call him--

b3 MR. SUMMERS: The porter.

THE COURT: The porter, and certainly the transit

police. Now, we were in maintenance facilities and I think we got even right on the spot an idea of the categories of maintenance workers, cleaners, the dispatchers, and I think one could pretty well -- these maintenance of way people, that has been pretty well described by Mr. McLaren. So I think we have certainly by now made a great deal of progress, at least in my eyes.

I repeat what I said five minutes ago, that the emphasis in the tour and in the Transit Authority's testimony has been to demonstrate the degree of danger, the degree of problems of various kinds that require alertness and would be deterred by having somebody who was under the influence of narcotics. All right.

Now, just returning to what I said I want to know if this emphasis leaves out some other categories of employees, and I keep talking about clerks. Are there people who simply open envelopes? Are there people who carry messages around at the general offices. Are there other people who are really not out there hurtling through the darkness or crossing third rails or doing those things which we have heard a great deal about and experienced?

Now I don't know whether Ms. DuBois wants to go into it, but I would like to to satisfy myself on it.

MR. SUMMERS: We have Mr. Jenkins available.

THE COURT: Who is Mr. Jenkins?

MR. SUMMERS: He is the director of personnel.

THE COURT: We are back to him.

MR. SUMMERS: We were going to use him for clerical.

THE COURT: I think your question was a fair one, do we need to go through again every last category. My general answer to you is the types of things that we have talked about I think have been described and illustrated, that the sort of operating maintenance type positions, and it is these other positions that I think remain to be explored.

Now Ms. DuBois may have other things, but that's my view. All right, it's 4:30. Now, with that in view have we finished with Mr. McLaren?

MS. DuBOIS: What did you say Mr. Jenkins does?

MR. SUMMERS: He is director of personnel administration.

MS. DuBOIS: I think the judge asked if that covered only stenographic--

MR. SUMMERS: He generally administers the personnel.

MS. DuBOIS: He could also talk about railroad porters?

MR. SUMMERS: He knows generally about them, but we have people who know with much more specific knowledge

than he has about it. We would like to make them available to you, if that's what you want to inquire into.

THE COURT: I do not want to inquire any more into what a motorman does or any of the people that I have described that I am satisfied about.

MR. SUMMERS: My problem is with Ms. DuBois.

THE COURT: All right. Well, Ms. DuBois --

MS. DuBOIS: We'll be satisfied with Mr. Jenkins.

THE COURT: All right. Mr. McLaren, thank you.

(Witness excused.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Carl A. Peazer, et al.,	Before: HON. THOMAS P. GRIESA, District Judge
vs.	
New York City Transit Authority	72 CIVIL 5307
Defendant.	

New York, January 27,28, 1975

* * *

STENOGRAPHER'S MINUTES

6/75

(2.30 p.m.)

W I L B U R B. M c L A R E N , resumed.

DIRECT EXAMINATION

BY MR. DUNN:

Q Mr. McLaren, you have previously been sworn and are under oath.

Would you describe for us, in as much detail as possible, what the Transit Authority employment policy is with respect to the employment of persons with an addiction history?

A You are referring to people who previously had an addiction?

Q Persons who in the past have used narcotic drugs.

A The instructions are that when a person is on the list and comes up for consideration that any case involving a long history, and that is anywhere from several years to -- not specific but from five to ten years -- they would refer to me.

Then we would give individual consideration to that type of a case and generally what we would do is to look at the background, the history, the employment stability, this sort of thing, and, of course, in most cases this sort of an applicant would already have had that stability part referred to me.

What we do is to discuss that particular case at our executive officer meetings. Those occur usually quite regularly, once a week, sometimes maybe two, three times a month. The last occasion we did that we had a special meeting for that case alone because of some other business that had come up over the holidays and vacations that they were unable to get to this one.

On this particular case because it involved an operating title and it was the first case we have had of this type, especially in view of the man's record and the fact we had had a physical examination as well as a psychiatric evaluation, the case or the discussion went on for two hours.

THE COURT: What committee is that?

THE WITNESS: Our executive officer committee. It's headed by a man with the title of senior executive officer. He is, in fact, the person responsible in title for the Transportation Authority. We report to him, the other executive officers. His name is Daniel Skenel.

At this meeting where you have the executive officers, myself, labor and personnel, and is the executive officer for operation and maintenance of the Transit Authority and the senior superintendent, general super-

intendent of the buses or surface operations, the executive officer for passenger relations, among his responsibilities are passenger safety, the controller who is an executive officer, the chief engineer who also is an executive officer and the general counsel.

We had the psychiatric and physical evaluation. We had the man's background, his employment recommendations and his employment history and we went to it as to what our policy should be in cases of this type.

As to a long discussion the group came to the conclusion, not unanimously, but did come to the conclusion that we should not hire this person but that this was not a bar to future considerations, that they would continue to review cases of this type, that the major consideration here was the title, the bus operator title. This was the decision.

THE COURT: Going back to the beginning of your answer you said that individual consideration would be given to certain types of people and I am not clear, you are talking about the person that has a past history of addition?

THE WITNESS: That had a past history of addiction and had taken or had stopped using drugs and had stable history for at least five years or more.

THE COURT: Off drugs for at least five years?

THE WITNESS: Yes. We do have occasionally young people, especially, who have been involved in some sort of an incident with marijuana, picked up by the police or picked up in a car and had marijuana cigarettes on them or picked up in the street and had a cigarette or two on their persons. That is handled differently.

These people are sent to Dr. Trigg for a drug evaluation and if he reports that they are not, in his opinion, using drugs then they are employed.

THE COURT: Okay.

Q Did you, Dr. McLaren, have occasion to have a conversation with this individual who had applied for the position of bus operator subsequent to the meeting of the executive officers committee?

A Yes. He had called and his records were in the law department, as a matter of fact, I told him I would call him back and I got the records and then we discussed his case and he asked me what the outcome was and I told him.

He was, of course, upset and so we had a lengthy discussion about the situation and he asked me if there was anything he could do, did I have any advice for him, and so forth, anyone he could contact, the usual

kinds of questions that you have in this nature.

My advice to him was that he should try at the next examination for a non-critical title. That all of us recognized that he had a good background, had showed stability and the examination was positive but that there was great reluctance to put anyone with any sort of a risk in a bus operator's job.

So he specifically asked me what I meant and I suggested a title like car cleaner or or something of that nature or janitor, things of that nature. He also asked if he might appeal and I said yes, there is nothing to prevent him form contacting anyone else and he asked who and I gave him the name of our senior executive officer and suggested he write him.

THE COURT: Can you give me some other examples of non-critical titles?

THE WITNESS: In this category I would say the janitor and the car cleaner.

THE COURT: How about in the subway field?

THE WITNESS: The porter and the car cleaner. I think there would be greater -- I think we would have more latitude on a porter.

THE COURT: A subway porter?

THE WITNESS: Yes, than we would on some of the

others. However, I use that advisedly as my own opinion because they do work with the public. I think we would have less reluctance with people who did not drive vehicles or be part of a crew or part of a control area or actually worked on the tracks, say, like a trackman or a signalman.

THE COURT: You have less reluctance for the people who didn't do driving?

THE WITNESS: Or worked as a crew on the vehicle like the conductor.

THE COURT: Or worked as part of the crew?

THE WITNESS: Right.

THE COURT: Are there any other instances you can give me now of a non-critical title?

THE WITNESS: I have to go back to the discussion because that is where I formed my opinion of it.

Here is a group of people who all expressed themselves and actually took a vote at the end and it would be my feeling that if you had first what they call the critical title of the vehicle operator or people who are actually out on the track that they would have greater tolerance on this point.

THE COURT: If you didn't have those?

THE WITNESS: If these titles were not in question. I would say a car cleaner definitely because

we discussed that title. I think that probably the porter would be given some consideration and possibly some of the helper titles in the -- I have to be careful on that. Let's say some of the titles in the car maintenance areas that are primarily working in the shops.

THE COURT: How about any office work, any work over at your main office?

THE WITNESS: Again with certain reservations but I think definitely there would be greater latitude there. Some of the office people are involoed in the controling, things of that nature. But generally the title, yes. The specific assignments, no.

Q Is the Transit Authority policy, Mr. McLaren, constantly being reevaluated or reexamined?

A Yes, this was I thought one of the most -- one of the most detailed discussions that I have been in in a long time on any subject. Two hours straight in an executive office meeting is a very, very substantial amount of time for any subject.

Q Have you or has anyone else at the Transit Authority considered as part of this constant re-examination or reevaluation the report of Carter Burden's committee dated December 20, 1973?

A Yes, I commented on that in previous testimony

that we had taken cognizance of that and, of course, it was widely publicized.

THE COURT: Did you actually read that?

THE WITNESS: N I read the reports in the New York Times and the other papers.

THE COURT: Did the Transit Authority ever get a copy of it?

THE WITNESS: I believe we did but I didn't read it myself. I am sure there was a copy around. I saw it but I can't say I read it.

THE COURT: What significance did you give, if any, to either the report or the report you read of the report?

THE WITNESS: The significance was this:

This was the first time. I think there was political debate on the merits of the program. Up to that point it appeared to have political support.

THE COURT: The methadone program?

THE WITNESS: The neighborhood programs, and so forth. There was considerable support and it was one of these things that you voted the money and you set up the clinics and everyone was happy about it and all of a sudden here was a political debate that brought up lots of new facts and evidence that had not come before the

political body before about the program, and it seemed to me to be brought up by people who had given it very strong support at the very beginning.

Much of it had to do, of course, with the question of the performance so I felt that we had a different viewpoint for the City Council than heretofore.

Q You have read the testimony that Dr. Dole gave before this Court in this proceeding, have you not?

A Yes, I have.

Q I call your attention specifically to a statement, first a question posed by the Court:

"Have you ever offered the services of your laboratory to Mr. McLaren and the Transit Authority", and Dr. Dole responded by saying, "Yes, I said there was a large amount of evidence from our testifying laboratory and I had in mind Dr. Gordon's work to show that patients stabilized on methadone had normal functions and capable of performing any job that required neuromotor coordination. I said to him if he felt unpersuaded by the general data we had that if you wanted to have specific testimony in cases of people who were bona fide methadone patients we would check them out with this battery of tests and see if they specifically were qualified or showed disability."

How does this comport with your recollection

of the events, Mr. McLaren?

A Not quite that way. My recollection of Dr. Dole's meeting was this way:

The reason for it is that we had employed a man by the name of Dr. Baer as our neutral examiner and the reason for retaining him was this:

In the course of our evaluation in examination of employees, why, we would come up with questions of whether or not a man was actually a drug user and the union and ourselfes had agreed that rather than rely solely upon the judgment of our medical department we would send cases to Dr. Baer for examination.

When we started out we didn't know Dr. Baird from anyone else. This was new to us and very new to the whole city. And Dr. Baer's name had been given to us as a man prominent in the field. We actually didn't know at that time the difference between what Dr. Baer stood for and Dr. Dole stood for.

We later found out they were in opposite camps. We employed Dr. Baer and as time went by our policy became controversial and Dr. Dole came out and testified for some of the employees who were being discharged and he had given very strong testimony, critical both of Dr. Baer and ourselves.

One of the points was the use or the importance of quinine in a test and Dr. Dole was very much upset at the fact we gave that some consideration. Furthermore, Dr. Baer had a rather brusk matter and the employees were complaining to the unions and the union came to me and said, "Do you mind if we change consultants, we are having these problems", and I said, "No".

And they said, "Do you mind if we look around?

And I said, "No, we will look around too".

I had a call from Mr. Van Riper who said he had heard of Dr. Dole, that he had testified and he thought he would go see him because he was connected with the Rockefeller Institute and did I know anything about it.

I replied that certainly I knew about the Rockefeller Institute and I had heard that Dr. Dole was the discoverer or at least the founder of methadone and that I would be glad to meet with him. So he called Dr. Dole.

I don't know if he met with him or talked to him on the telephone but as a result of that conversation Dr. Dole said he would meet with us. But he wanted to make sure that the authority did not have any animosity because of his testimony and asked if I would call him. I did and we discussed it.

I assured him we did not have. So we went

to his office. I was the only one from the Transit Authority. The union had four or five of their committee alone. We went into his office and at the beginning he told us that he would not serve. He was too busy, and secondly, he felt that he destroyed his neutrality by the fact that he was so opposed to Dr. Baer and also of his testimony.

Mainly he was too busy to do it. And he asked us what we knew about the background of methadone and we said we didn't know very much. We explained why we were there and his testimony was very accurate about that. We were seeking someone who can assure that we would have the best possible evaluation and that we really were involved in this thing for the first time and we were trying to find a way out and that the union had explained their problems. Their people were mad about addicts being on the property, nodding, sleeping on the job, poor performance, and we had the same complaints.

We both came to the conclusion that what we should do is get rid of people that were violating the rules and that the union said, "Well, this is the rule, we live by the rules because that is in the contract and until this contract terminates we have to live by it whether we agree with it or not". But we want to make sure that

we have the best medical evaluation.

He then went through the whole history, just about the way he testified the other day, and gave us an education. At the end of that he had said that he was going to recommend us to Beth Israel. He already explained their role in this program and the development of it. He felt they had a better background and could do more for us. Not only do they have the connections with them but they had the laboratories and the facilities and the trained people to do exactly what we wanted to do.

In the course of this discussion we got into this question of the ability of people on methadone or in the treatment to do work and in the course of that he made the statement that appears in the evidence that he did not feel or did not want people in the methadone treatments be a motorman because of the adverse publicity. You have to keep in mind that here we were there seeking his counsel. The union had asked for me and we came to him as an expert. We were novices. We knew nothing about the program.

It was a very impressive piece of persuasion as far as we were concerned because here is one of the most eminent men in the field telling us or confirming what we already believed the public reaction to the participation

in this sort of program would be.

When we finished that part of the meeting we sent out for sandwiches and at that time the meeting broke into sort of social talk and a woman came into the room. I thought it was his wife. I still do. Others said it wasn't. I believed she was.

She excused herself for breaking in and they did some talking among themselves on business. We continued our social chatter and during the course of our breaking into this informal meeting this question came up about offering services but it wasn't to me. He directed that question to Mr. Van Riper who after all was the person that set up the meeting, not me. The meeting was oriented to the union.

BY THE COURT (Continued):

Q And Mr. Van Riper replied?

A Yes.

Q He was the union man?

A The president of Local 100 and he replied and that ended that part of the conversation and his reply was no thank you, we had what we came here for and that was referring to the Beth Israel Clinic. We didn't really know enough about this subject at this time to enter into any sort of an agreement about rehabilitation or screening or any other thing. Maybe in time the TWU may be back to it, but not at this point.

From there he did not refer us to Dr. Trigg, he referred us to Dr. Gollance at Beth Israel who in turn referred us to Dr. Trigg. It turned out that Dr. Gollance's father worked at the TA and we took that for granted that the reason we had been referred to him was because he knew of our operation.

BY MR. DUNN (Continuing):

Q Dr. Dole referred to the event of adverse publicity in the event of an accident that might involve a methadone patient employed by the authority. Would part of that be the effect on jurors hearing a lawsuit for damages based upon the accident?

A We commented on that point also the loss of confidence. We discussed that at length. Dr. Dole pointed out that he was a daily rider in the subway and he pointed out how people would react to that adverse publicity. I don't think there was disagreement in the entire room on that point or statement. I don't think he was the only one to make that point. I certainly did. As I think back, I think the union did too.

MR. DUNN: I have nothing further, your Honor.

CROSS EXAMINATION

XX BY MS. DuBOIS:

Q Mr. McLaren, I would like to start where you started in your testimony that you say that the present policy is this individual consideration of persons who have been drug free for five to ten years.

Could you tell me when this policy came into effect?

A Yes. You may recall I submitted last time I was here a draft of a policy that we had proposed, that is, my department, which is now labor relations. That policy was not accepted. However, in the personnel department, we agreed that the policy would be that if we had cases that generally fell in that category, they would be referred to my office for individual consideration.

Q Is there any directive, any written directive or memorandum of any kind relating to what you now describe as the present policy?

A No, I don't think so. I know there isn't.

Q You described this executive officer meeting which I take it is the procedure that you will have now for reviewing these cases. Is there any other class of applicants for Transit Authority employment for which there is a comparable review procedure?

A Let me clarify one thing. When I say we are reviewing the cases, I didn't really mean that. It is reviewing the procedure. We are trying to find at what point we would exercise -- settle on a policy in this area.

Q Would every future applicant who has had a drug history be subjected to this executive committee meeting or not? Is the executive committee meeting process supposed to focus instead on, for example, classes of physicians, that kind of policy or is it for each individual applicant?

A I think I explained last time, I believe it was a question from his Honor, that if this particular case we were talking of, a bus operator, went before the executive board and that was approved, then I would feel

given the same set of circumstances in a man's case history, it would also be approved for a car cleaner because that was a less critical category.

Q As a car cleaner, would his case be reviewed by this executive office?

A Yes, but we haven't had one.

Q Then you are saying if a second person applied for car cleaner --

A Given the same set of circumstances, it would not. In general, it wouldn't be referred to me unless as I said they had a stable history and conformed to that written policy that we had attempted to establish.

Q Is it then your goal to have this executive officer group to determine certain positions or titles which people who fall into this five to ten-year, et cetera criteria would or would not be eligible for it?

A Let me answer it this way:

It is my goal in approaching it this way to try to establish a policy that I can't get established in a written more formal, more concrete way. Our executive group is not willing to give up their prerogatives in this area and they want to feel their way, as they characterized it. We want to feel our way in this field because there are so many different people involved. It is just not

my area but it is the Rapid Transit, the Law Department, the passenger relations and so forth.

Q Let me ask you this:

If tomorrow you received a case of somebody who had been free from drugs for ten years and it applied to a bus operator position, would that person's individual case, the individual circumstances be presented to this executive officer group that you mentioned?

A Not unless I felt there had been a change in their attitude.

Q In the attitude of the executive officer group?

A Yes.

Q For the present time, the policy is --

MR. DUNN: The witness is not being permitted to finish the answer.

Q I am sorry for cutting you off but let me rephrase it and you answer it fully.

Is it not true at the present time the policy is to exclude this group of people from bus operator position, although you might at some time in the future decide to change that policy?

A I can't answer that. I can say if it came in tomorrow, I would not deem it advisable to resubmit the name. A year from now, I might, but tomorrow I would not.

I feel that I have a mandate at the moment on the bus operator. I would continue to probe because I think we are living with a changing situation. I gave the advice to this young man because I felt that he had, honestly felt he had a better opportunity or a chance in another area, but I did not think he had a chance as a bus operator.

Q You stated this was the first case of this type that had come up. Dr. Trigg testified that this was the first case in which he had been asked to make the kind of psychiatric evaluation which you were able to consider in this case.

Is it not true this is the first case which you have allowed to come up, which you have allowed to be considered?

A No. The reason for the psychiatric evaluation is, we received an absolute stream of letters on this man and I find often that when we receive these large numbers of letters, especially from political and civic figures, that very often the person that is being testified about is sometimes an unstable person. I don't know whether it is a clutch and they feel if they get 50 letters from 50 prominent people, it will overcome some of their background, but I get that reaction. It may be just some sort of a gut feeling on my part, so I became concerned

that this man may have something that wasn't very stable, so I asked Dr. Trigg to look at that. I discussed that point with him.

Q I would like to focus on the discussion of the critical and non-critical titles in this context because in other context in the case in discussing which categories of people was necessary to give physical examinations to, which categories of people --

THE COURT: Please. Let's just go ahead.

Q You defined sensitive and non-sensitive. Before you defined sensitive as including positions like towermen, motormen, bus operator, are there other positions than that which you include in the sensitive category?

A Yes. I referred to people that work around the track, because they get killed and injured and maimed.

Q Are there titles within which all people serve?

A Yes, like trackmen and road car inspectors, single me and most of the maintenance people. Some of them may work in a shop but all the titles --

Q Not everybody within the title. In other words, what I am saying, what titles, is there any title to which you would say every single person with that title actually has a sensitive job?

A I would say anyone in the maintenance and way

2 department has a sensitive job because while there may be
3 a small number that won't actually work around the track,
4 the majority, the vast majority of the people do work
5 around tracks.
6 Q You testified previously, for example, that there
7 were some motormen who had jobs which were non-sensitive,
8 most motormen that worked just running the tracks back and
9 forth and the line and even in semi-clerical?
10 A A motorman could have a physical disability
11 that would require him to be taken off of duty. If he had
12 more than ten years of service, for instance, he would be
13 given preference on an assignment. If he has less, he
14 has less preference and he might be assigned down to a
15 railroad clerk.
16 Q He would be able to be assigned to a non-
17 sensitive job?
18 A He would be assigned to a different job.
19 I consider railroad clerk a sensitive job, but less than a
20 motorman.
21 To refresh your memory, I said some titles were
22 worked predominantly in the shop and I was referring
23 primarily to car maintenance.
24 Q I would like to ask you this:
25 You said that the groups had concluded that

there was a risk that this ten-year drug-free man represented. I would like to ask you exactly what the basis for the groups reluctance, what risk it was considering when you said they felt it was too risky to employ this person as a bus operator?

A Let me explain it this way. The meeting opened with John deRoos, the general counsel stated -- and it was an excellent way to do this -- he said one thing that has happened over the last three or four years is that Wilbur McLaren and myself have had a liberal education in the field of drugs and he went on to say from his point of view on it and one of the things he pointed out, that there were some people that felt that once a person is drug-free for ten years, that he was as good a risk as a person who was stable, who had no particular problems or anything, drinking, anything else. I concurred and we had a long discussion of the pros and cons but what I run into is this:

The people that run the sysem have thousands of people out on the property spread all over. I have been into this testimony so many times. Very literally in their hands is the responsibility of delivering a service that carries people, and we do have problems and when these problems occurred, the hysteria in this city is

such that it is just unbelievable. It is like a big wave washing over. It just washes over everything and the tragedies, you go down into the tunnels after this and these big men do it and the people are being helped out and the press is all over and it is on radio and TV and people are screaming, they die, they are injured, smoke inhalation, all this sort of thing. They just have an abhorrence of bringing people into the system that are risk, in their judgment, that are difficult to supervise, that employees --

Q I understand --

THE COURT: Don't cut him off.

MR. DUNN: I object to the interruption.

THE COURT: Don't interrupt.

A (Continuing) And the general publicity. It kills our passenger service. Like this man who has just been brought in from the Macy's company. He was vice-president and he is an expert merchandiser. There is no question about it. I have worked in auto companies and other companies that make their living on merchandising and he is a crackerjack and he just throws up his hands when you start talking about merchandising a product where, as Dr. Dole says, you have somebody with a drug history at the wheel.

So, this is the sort of thing you get into and we just haven't reached the point in I think an intelligent conversation with and intelligent group of men who indicated time after time their concern for employees, passengers, who just can't accept it and won't accept it for the problem involved and I don't care how much you argue and you talk. We haven't made him a bus operator.

Car cleaner, clerical, something in this nature, it could well be different.

Q But with respect to bus operator, are you not testifying that the major reason for the exclusion and the major risk that this group considered was the kind of public relations risk that you and Dr. Dole discussed, the risk that if in fact there was an accident, it would cause a tremendous public relations problem?

A They are not willing to accept one John deRoos and myself and others have supported. They are just not ready to accept that because on the other hand they also read the papers. We also have to give the other side of the case, you know. We just can't give one side and that is what is accepted.

Q When you say "they" you mean the operating people?

A The group. It wasn't always operating people.

Q Is the reason they are not willing to accept it the public relations problem?

A That is part of it, and by the way, it is a very important part. That is the reason for us being. If it wasn't for that, we are not earning our salaries.

Q What other reason, if you say that is part of it and a major part of it, what other reason?

A The reasons I outlined. The problems associated with the operation, the fact that they have thousands of people, not one or two but thousands spread out all over the city, difficult to supervise, not supervised.

2/2 pm

Q What I am trying to get at is, what is there in this person with a 10-year old addiction, non-addiction history that makes him in the opinion of that group more of a risk than another applicant?

A His history and background, the fact he has been involved in drugs. That is what they have to look at. That is what society looks at. It is the fact that we cannot disassociate this man regardless of how admirable his qualities are today with the fact that he has a police record as long as my arm and he had a long period in his life where he was very unstable.

THE COURT: He had a police record?

THE WITNESS: Yes, a long one.

Q But if the same person applied without a police record tomorrow, would he be considered?

A You mean a bus operator?

I don't think so because the fact he had a police record I think is to be expected, but it does make it more of a problem in the public relations area and I think that is what Dr. Dole was talking about.

Q The policy directive that you previously testified about. What I would like to clarify is the difference between the policy directives and the present policy with regard to former addicts not now on methadone

and who have never been on methadone, and I would like to shwo you this for identification.

A Yes.

Q Is that the draft of the policy directive that you say was the only one that was ever seriously considered in written form, but was not adopted?

A I won't say that is the only one that was seriously considered. You want to remember we did submit one and I said --

Q That is the one.

A No, to Senator Hart.

THE COURT: What exhibit is that?

MR. DUNN: Is that marked for identification?

MISS DU BOIS: The hart letter is in evidence. This is not.

Q This is the policy directive you previously discussed? I wasn't trying to characterize it.

A It was a proposed policy draft.

(Plaintiffs' Exhibit 55 was marked for identification.)

MR. DU BOIS: Any objection to it being received in evidence?

MR. DUNN: We haven't seen it.

THE COURT: Go ahead while they are considering

it.

Q Mr. McLaren, on page 2 under pre-employment numbered 2, if you would look at the sections under rehabilitation sections A and B, those indicate that under this policy directive you would have accepted drug free persons only if they had successfully completed a drug free program?

A It says complete abstinence.

MR. DUNN: I object to counsel interpreting the document.

THE COURT: That is what it says.

I will overrule the objection.

Q What I would just like to ask is whether in this respect the Transit Authority's present policy is similar to what this policy directive says.

A Yes and no.

Youwant to remember this was written in 1973 and at that point we were having considerable problems with the question of quinine. I think that has been resolved.

BY THE COURT:

Q How has that been resolved?

A Through our work with Dr. Trigg. We put a great deal more emphasis on quinine in the urine than

he would and he would interpret it and by working with him we straightened out how we would interpret it and basically we gave it a lot of more importance than he would.

Q Because he is thinking of the possibility of tonic in a drink?

A Yes, and I think he came up with, I don't know how many other sources of quinine.

Q You are interested in quinine as it reveals the use of heroin, aren't you?

A Yes.

Q So you have worked out a way to operate on that with Dr. Trigg?

A Yes. We would never consider quinine ourselves. If there was any evidence of it, we would send him to Dr. Trigg and go from there.

BY MISS DU BOIS:

Q I guess I don't understand. This has a requirement that an applicant successfully complete a drug free program.

A No. You asked me about the policy and I said that the policy has changed. This policy would not be the change today because of this development.

THE COURT: It seems to me it is such a laborious way. Aren't yousimply asking him if they

still refuse to hire someone on a methadone maintenance treatment program?

MISS DU BOIS: No.

Q With respect to drug free people, would you require in the past they complete some sort of drug free program, or would you take somebody who had been in a methadone program in the past?

A I am not sure what you mean.

BY THE COURT:

Q What Miss Du Bois was asking, if you had somebody that came to you and you could verify the fact he had been off of any drugs, any of these dangerous drugs, for five years, but that prior to that time he had been a heroin addict and had been a methadone program, and detoxified, would you consider him for employment?

A In my judgment he would have completed the recognized drug rehabilitation program.

Q The problem I think what Miss DuBois is getting at, on page 2 in this written draft policy under reabhilitation, item B it says a program must be one of complete abstinence.

A Yes. If he were still on methadone?

Q No.

A If he had abstained after the methadone treatment?

Q Right.

A Then he would be qualified under this program. "Abstinence" is the key, not the rehabilitation method, but abstinence is the key.

Q Mr. McLaren, if you would look at the section under job stability, would you tell me whether it is true under your present policy that an applicant must furnish proof of stable and gainful employment for a period of at least five years immediately prior to being considered for employment?

A You are going on the supposition that this policy was adopted and it was not.

Q I am not. You said that your present policy was different from this and that you didn't adopt it. I am just trying to find out whether under your present policy you require five years of stable employment?

A Our present policy simply states to the effect that if a person comes in and he had been drug free for five or more years and in the opinion of the people that do the interviewing when you select him, if they feel he is a stable candidate, they will refer the application to me. We haven't gone into this detailed instruction because I might better be guided by this than they and certainly I would require it.

I would require job stability.

MISS DU BOIS: Can that be received in evidence?

MR. DUNN: We have no objection to the introduction of that document.

(Plaintiffs' Exhibit 55 was received in evidence.)

Q With respect to the Burden Report, can you tell me what, on the basis of your newspaper readings of it, your impression, to the extent you remember, what conclusions you assumed that the Burden Report drew, or what was it in what you read about the Burden Report that you relied on?

THE COURT: He said he didn't read the Burden Report.

MISS DU BOIS: He said he relied on it.

THE COURT: I don't understand why you open this up. He said that it indicated to him a change in political viewpoint. If you are going to go into it a lot more, that is your problem.

MISS DU BOIS: I want to know if what he relied on was what he testified about before.

THE WITNESS: I have nothing other than the fact that this was basically a document issued by an

elected representative in relying upon evidence and the investigation that they had. I didn't accept it as a scientific document.

Q Did you assume it was issued by elected representatives?

A The spolesmen were elected representatives and it was attributed to the councilmen.

Q You testified in your deposition, for example, about how you relied on what the city has said in their investigation; the way the methadone clinics have been run.

THE COURT: Is the deposition in evidence?

MISS DU BOIS: Yes, it is. That is page 93 of the deposition. Whether that part of it is in evidence, I am not sure, that portion of it. What I would like to do is ask Mr. McLaren whether that is an accurate representation of what he said. We all said no, what the city had said in its investigation --

MR. DUNN: May we have that part read?

MISS DU BOIS: We alsoknow --

THE COURT: I don't even know what the question is. It is just a lot of statements and discussion.

Do you have a question?

Q Was it your impression as you testified in the deposition that this is what the city had said,

that it was a city report in some form?

You testified at another point --

MR. DUNN: Counsel is paraphrasing.

MISS DU BOIS: I am not paraphrasing. I am quoting.

THE COURT: Miss Du Bois, at the present time I would consider receiving that report to simply show the existence of that report. If it is a document in the public domain it exists. It was reported in the press and it was used the way he presently said it was used, as an indication of a possible political change, a political mood.

I will tell you right now that I am very concerned about not gathering my facts from hearsay documents which are subject to debate and which should be clarified and I will not use that report to prove essential facts about this case, period, even if I receive it, so I think you can relax on that.

MISS DU BOIS: I understand that, your Honor. I am simply trying to point out to the extent he did rely on it, he relied on it as an official publication. He testified twice to that in his deposition that it was put out by an official body and that the testimony here has clearly indicated that it was in no way --

THE COURT: I didn't hear the testimony.

MISS DU BOIS: You did, of Mr. Kerson.

THE COURT: This is not a weighty point that you are making. Don't belabor that. Let's go on.

Q Did you ever talk to Mr. Kerson?

A You have to identify him.

Q Mr. Kerson is the member of Councilman Burden's staff who did the primary investigation.

A No.

Q Did you ever talk to Councilman Burden?

A No.

Q Did you ever talk to anyone else involved in the preparation of the report?

A No.

MISS DU BOIS: The only questions remaining I have go to the conversation with Dr. Dole.

THE COURT: All right.

Q Mr. McLaren, did you hear Dr. Dole offer his services in determining employability of methadone people at this meeting?

A Well, I want to go back to the background of the meeting. You may recall I said we had reached a point where we were eating and breaking into some sort of social conversation and--

MISS DU BOIS: Can I strike the question?

MR. DUNN: I will object. The witness is not permitted to answer the question.

MISS DU BOIS: I just think I can do it more quickly.

THE COURT: That is all right with me. You do it as quickly as you can.

Q Mr. McLaren, you testified that Dr. Dole did no directly offer to you the services, his services and the services of his laboratory to screen methadone patients for the Transit Authority. However, he did offer these or mentioned the possibility of this to the union officials in your presence.

Had he offered that directly to you, would you at that time have accepted the offer and agreed to hire methadone people?

A No. We had already accepted his recommendation. That was that we go to the doctor at Beth Israel and that is what we came for.

Q But you did not take up the offer you had heard?

THE COURT: That is obvious, really.

Q You testified that Dr. Dole agreed with you as to the public relations problems with the motorman position. Isn't it true that Dr. Dole pressed you to consider methadone people for positions as to which there

would be no public relations problems and that in response to that pressure, you responded that it would be too administratively too inconveneint to classify your positions so that you could hire people for the positions which would raise no public relations problems?

MR. DUNN: I object as to the form.

THE COURT: Overruled.

A I believe you said that he agreed with me. It was the other way around. He made the point.

THE COURT: Just a moment to save time.

Did Dr. Dole suggest to you that you might consider methadone patients for, let's say, non-critical positions? And did you respond to that that it would be administratively difficult?

THE WITNESS: I don't remember that but I think the meeting is out of context.

THE COURT: The answer is "no," he doesn't remember.

Q I previously asked you the last time you testified about underlying safety reports. I have reviewed the documents we received subsequent to that.

I want to know whether there are any reports or documents indicating the number or the percentage of accidents caused by employee malfunction as compared to

machinery malfunction or passenger problems.

A We dont keep records that way. We are not required to by the National Safety Council.

MISS DU BOIS: That is all I have.

THE COURT: Thank you, Miss Du Bois.

(Witness excused.)

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